

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Local Assessment Review Board (LARB) pursuant to the *Municipal Government Act (MGA)*, Chapter M-26.1, Section 460.

BETWEEN:

Calgary Co-operative Association Ltd. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

A. Eastham, Presiding Officer

L. Dunbar-Proctor, Member

J. Gosse, Member

This is a complaint to the Okotoks Local Assessment Review Board in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered in the 2024 Assessment Roll as follows:

| Roll Number | Address | Assessment |
|--------------------|---------------------------|--------------------|
| 0048320 | 101 Northgate Blvd | \$3,575,000 |

This complaint was heard on the 26th day of July 2024 by videoconference.

Appearing on behalf of the Complainant:

- A. Izard, Northern Property Tax Advisors Inc.

Appearing on behalf of the Respondent:

- C. Van Staden, Assessor
- R. Beckner (observer)

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Preliminary Matters

1. No Preliminary Matters were brought forward.

Property Description

2. The subject property (subject) is a 15.89-acre parcel with frontage along Highway 2A. The improvements are a 1,917 square foot (SF) house with garage; and an 875 SF shed.

Background

3. The following assessment details were provided:
 - Building age: 1969;
 - Sale date: November 23, 2015 (Land Titles registration shows January 2016);
 - Sale price: \$3,575,250;
 - 2023 tax year calculation: \$3,575,250 based on decision from CARB 238/02/2022;
 - 2024 tax year calculation: \$3,575,250 based on decision from CARB 238/02/2022;
 - 2024 tax year calculation attributes \$0 to the Residence, basement and shed – and indicates an area of 1,742 SF attributable to area used for beehives assessed at \$0 – noting that Regulations states that farm land under 1-acre is not assessed; and
 - Subject property falls within Phase 1 of the Town of Okotoks Area Structure Plan.

Issues

4. The Complainant checked the following boxes on the complaint form: box 3 (an assessment amount), box 4 (an assessment class), box 5 (an assessment sub-class), and box 6 (the type of property).
5. The following issues were before the Board:
 - Does the evidence support a reclassification of 12.89 acres to farm land?
 - Is the area occupied by the beehives on the site sufficient to change the parcel to farm land?
 - If so, what is the relevant market value to be applied for the remaining 3-acres?

Board's Findings in Respect of Each Matter or Issue

6. For reasons outlined herein the Board decided as follows:
 - The assessment is reduced to a total assessment amount of \$568,500.00 (truncated).

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The breakdown is as follows:

- 12.89-acres is farm land at \$350/acre and the assessment is changed to \$4,512.00; and
- 3-acres is residential at market value of \$187,970/acre is changed to \$564,000.00.

Summary of Positions

7. The Board considered the documentary and testimonial evidence and arguments presented by the parties in support of their respective positions. The positions and key evidence presented by the parties are summarized below.

Complainant:

Issue 1:

Does the weight of evidence support changing 12.89-acres to be classified as farm land?

8. The Complainant indicated that multiple requests were made to the Municipality to clarify details related to the calculation of the 2024 assessment amount for this property. This information was provided prior to the appeal deadline with the submission of required documents and the payment of a \$200.00 fee to the Municipality. This 'fee' was questioned by the Complainant who provided copies of a Town of Okotoks CARB decision dated May 12, 2023 which indicated:

With respect to the fee of \$200 per roll number, the Act and Regulations are silent with respect to whether a fee may be charged, stating only that "an assessed person may ask for the municipality, in the manner required by the municipality, to let the assessed person see or receive information...showing how the municipal assessor prepared the assessment of that person's property [emphasis added].

9. The Complainant noted that the property was farmed as apiculture (beekeeping) during the assessment year in 2023 highlighting the legislative definition of farming outlined in s. 2(f)(i) of the *Matters Relating to Assessment and Taxation Regulation (MRAT)*.

f) "farming operations" means the raising, production and sale of agricultural products and includes

*i) horticulture, aviculture, apiculture and aquaculture,
(underline emphasis added)*

10. The Complainant presented evidence of a lease dated May 2, 2023 between Calgary Co-

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operative Association Limited and Honey Meadows Farm Inc.:

"From the date of this agreement Honey Meadows Farm and its agents and employees shall have access to the Site during normal business hours from time-to-time which access shall be at Honey Meadows Farm sole risk and expense, for the purpose of maintaining, repairing, monitoring and collecting honey from the hives."*

**Site reference is within the subject property*

11. Photos taken in the summer of 2023 by Honey Meadows Farms were presented showing beehives alongside a hedgerow of trees.
12. Email correspondence between the Complainant and the owner of Honey Meadow Farms was presented outlining specific details related to the requirements needed for the successful operation and management of bees and their hives.
13. The Complainant presented evidence that Honey Meadow Farms, operating in the Okotoks area since mid-1980's is the largest honey operation within the province of Alberta managing upwards of 1,000 hives in various locations and selling their products both locally in Co-op grocery stores and to major labels such as Bee Maid Honey. The Complainant also presented information regarding Jon Zwiers, owner of Honey Meadow Farms, as a third-generation beekeeper, supporting his knowledge and experience with beekeeping.
14. The Complainant provided information that the Town of Okotoks identifies itself as a "Bee City" providing the Resolution that appears on the Town's website. Additional information and multiple links were provided related to apiculture and the nature of beekeeping as a farming industry.
15. The Complainant noted that under *2023 Alberta Farm Land Assessment Minister's Guidelines* that Dry Pasture farm land is assessed with a base rate of \$350/acre.

Respondents Position

16. The Respondent indicated that the assessment records for the subject property were released to the Complainant prior to appeal upon receipt of payment and completion of all necessary documents. The Respondent did note that an administrative error was related to the delay in the Complainant receiving this information and policy changes are being implemented to correct.
17. In rebuttal to the Complainant's concerns regarding the \$200 fee charged by the Municipality the Respondent presented a copy of Okotoks Revised Bylaw 09-24 "*being a bylaw of the Town of Okotoks in the Province of Alberta to establish fees, rates and charges*

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- for services provided by the Municipality*". This bylaw outlines a fee schedule of \$200 for Assessment information s. 299 request-Residential/Non-residential Per Property.
18. The Respondent acknowledged that apiculture is farming and that the Complainants' witness, Jon Zwiers, is a farmer. Concern was expressed regarding the area that would be considered to qualify as farm land.
 19. The Respondent argued that while farm land is a valid consideration in assessment, the lease signed by Honey Meadows Farm is an ACCESS agreement for a beekeeper, which is renewed annually for \$1.00 and 21 KG of honey.
 20. The Respondent noted that in the opinion of the assessor, less than 1-acre of land is being used for beekeeping and therefore the entire parcel must be assessed at market value. The assessor acknowledged that 312 SF of "farming" is taking place in the physical location of the hives, which represents less than 1-acre of land and therefore would be assessed at market value.
 21. Maps, aerial photos, and photos of the land were presented by the Respondent with the location of the beehives noted. A 1-acre area was superimposed on the site photo to illustrate size differential of an acre of land and physical location of the beehives.
 22. Photos taken May 24, 2024 were presented to indicate primarily grass and natural vegetation available at the site. No flowers were visible at the date of the photograph.
 23. The Respondent provided photographs showing fencing in disrepair on the subject property.
 24. The Respondent highlighted in the Okotoks Bee City proclamation that support is for native species of bees with a preference to restrict urban honey beekeeping due to competition for resources.

Issue 2:

Is the area occupied by the beehives on the site sufficient to change the parcel to farm land?

Complainant's Position

25. The Complainant presented email correspondence from Jon Zwiers, owner and operator of Honey Meadows Farm, indicating that the 30 hives on the 12.89-acres is the maximum capacity for honey production at this site given the availability of food, water, and shelter. The land would be insufficient to support additional hives.
26. The Complainant rebutted the Respondent's position that 'farming' only takes place on 312

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SF, referencing back to email correspondence from Jon Zwier noting that the bees need space for collecting pollen using the example of a cow or sheep needing land to graze.

Respondent's Position

27. The Respondent noted that Jon Zwiers was expected to be in attendance at the hearing. His absence negated the opportunity for questioning and clarification of information provided in email responses to questions sent by the Complainant.
28. The Respondent argued that the area in which honey is being produced, i.e. the hives, is where 'farming' is taking place, which supports using only the 312 SF of land occupied by the hives as farm land.
29. The Respondent argued that the bees cannot be contained and travel to where the nectar and pollen are. Under this scenario, the Respondent stated that if this were the case *"then all land in Alberta would be considered farm land"*.
30. The Respondent questioned if the land on the subject property is sufficient to support 30 hives based on reported visual inspections of the land for vegetation growth.
31. The Respondent indicated their presentation was handicapped by not being able to question the farmer (Jon Zwiers) specifically on *"how he believes he is farming the land beyond 312 SF."*

Issue 3:

Does the weight of evidence support a change to the market value?

Complainant's Position

32. The Complainant argued the subject was assessed based on a CARB decision from 2022 which has been carried forward to 2023 and 2024 tax years applying a land rate of \$225,000/acre.
33. The Complainant argued that the assessment of the subject property was not prepared according to properties of mass appraisal in alignment with *MRAT* s. 5(a).
34. The Complainant questioned the rationale of applying an assessed land rate of \$225,000/acre noting this does not represent typical market value for properties similar to the subject and not reflective of an assessment valuation as of July 1, 2023.
35. The Complainant referenced *MGA* s. 297(1) Assigning assessment classes to property:

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297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

- (a) class 1 – residential;*
- (b) class 2 - non-residential;*
- (c) class 3 - farm land;*
- (d) class 4 - machinery and equipment.*

36. The Complainant noted that the 2024 assessment notice does not specify an assessment class to the subject property.

37. The Complainant referenced *MRAT* s. 7(1)(a) and (b); Valuation standard for a parcel of land and s. 7(3)(c):

7(1) The valuation standard for a parcel of land is

- (a) Market value, or*
- (b) If the parcel is used for farming operations, agricultural use value.*

7(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

- (c) An area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes.*

38. Two (2) comparables with 2023 sales were presented for land analysis for ALH zoned land as follows:

| Roll Number | Civic Address | Zoning | Land Area | Sale Date | Sale Price | Sale per Acre |
|-------------|--------------------|--------|-----------|-------------|------------|---------------|
| 1704093 | 17014 338 Ave East | ALH | 6.65 | 25-April-23 | 1,250,000 | 187,970 |
| 1704096 | 322186 17 St East | ALH | 4.00 | 23-Mar-23 | 550,000 | 137,500 |

39. Six (6) additional comparables of ALH zoned properties were presented. The Complainant noted that using assessment information available from the Municipal website, some assumptions were made through analysis that 3-acres of ALH land is assessed at \$140,000/acre within the Municipality. Four (4) properties within the selection indicated roll numbers starting with 170.

40. At this point, the Complainant commented that he was assuming the Town was following mass appraisal to which the Respondent objected and requested a retraction of the inappropriate statement.

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41. In summary, the Complainant expressed concerns that the assessment for the subject property was not reflective of changes within the subject property. Specifically - MRAT s. 6, assessment based on market value as of July 1 and MGA s. 289(1)(b) condition date of December 31 of the assessment year.

Respondent's Position:

42. The Respondent highlighted the professional qualifications and experience of both C. Van Staden and D. Genereux, Assessors with the Town of Okotoks.
43. The Respondent acknowledged the 2024 tax assessment is based on a CARB decision from 2022 where the Board determined the value of the property was its sale price in 2016 of \$3,575,000 and out of respect for this Board decision this value was brought forward for the 2023 and 2024 tax assessment years.
44. The Respondent indicated the best indicator of value for the subject was the value offered from the 2022 Board decision as no other evidence of market value is available.
45. The Respondent indicated the subject property is geographically within close proximity to large commercial developments at the north end of Okotoks and argued that the land will likely never be used for farming in the future and has a highest and best use as future commercial development.
46. The Respondent noted the subject property is within the Town of Okotoks, Agricultural & Land Holding (ALH) District. According to Okotoks' Land Use Bylaw, ALH lands "*primary intent is to continue to support rural agricultural activities prior to transitioning to urban style development*", supporting the potential for future commercial development.
47. The Respondent indicated that the 2023 assessment was \$3,757,250 with no appeal brought forward at that time. It was noted that while standards are considered, the subject property's assessment as heard at a CARB in 2022, where the Board determined at that time the subject's assessment should be set at \$3,575,250, has been carried forward.
48. The Respondent provided a 2023 Land Title Certificate showing a transfer of three (3) parcels of land to a subsidiary of Calgary Co-operative Association Limited, CCOA Red 2 GP Inc. This document indicates a mortgage of \$8,000,000 on the three (3) parcels of land: one (1) site in Cochrane; one (1) site in Okotoks; and one (1) site in Calgary. The Respondent acknowledged that there was no awareness of the allocation of the mortgage to each of the sites.
49. An Affidavit Re: Value of Land signed by Michael J. Wald, Barrister and Solicitor indicating

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a current value of the land [related to this land transfer] in the opinion of Justin Burt of the City of Calgary to be \$15,669,010.62 was presented by the Respondent.

50. The Respondent suggested these documents support the assessment of \$3,575,250 for the subject property.
51. The Complainant drew a connection between Calgary Co-operative Association Limited and CCOA noting they both show the same physical address.
52. The Respondent indicated to the panel that any property starting with a roll number of 170 are all part of annexation order 199/2017 and are assessed by Foothills County, not the Town of Okotoks. The Respondent noted that Foothills County likely uses different parameters for their property assessment.
53. In rebuttal, the Complainant noted that from the Town's website, properties starting with roll number 170 show the Municipality as "*Town of Okotoks*" not Foothills County.
54. The Respondent noted that 338 Northgate Circle and 119 Northgate Circle are assessed as commercial sites and are not comparable to the subject property. 127 Northgate Drive and 133 Northgate Drive are also inferior to the subject both being outside the area structure plan for the Town and will not be ready for development for several years.
55. The Respondent highlighted the subject property lies within the North Gateway Phase 1 development of the Town of Okotoks Area Structure Plan (ASP), which would have a different rate applied to these properties than those properties in Phase 2.
56. The Respondent reinforced that although dated, the decision of the CARB Board in 2022 with an assessment of \$3,575,250 based on the sale of the subject property from January 2016 is the best indicator of market value for the subject.

Boards Discussions, Findings, and Reasons

57. The Board reviewed all documentary submissions, testimony and arguments from the parties and relevant legislation. The Board will address comments to the evidence found relevant to the determination of the issues identified.

Issue 1:

Does the weight of evidence support changing 12.89-acres to be classified as farm land?

58. The Board was persuaded by the evidence presented by the Complainant that farming by way of apiculture is taking place on 12.89-acres of land within the subject property. The

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Board was persuaded by the land access agreement to Honey Meadow Farms, the physical situation of the location of the hives, and expert testimony from Jon Zwiers.

59. The Board was also persuaded by information provided by the beekeeper related to the necessary requirements for bees to produce honey. The Board did note the inability of both the panel members and Respondent to have meaningful discussions with Jon Zwiers to supplement his email responses to the questions sent to him by the Complainant.
60. The Board acknowledged that bees are not solely contained within hives, much as a cow is not contained to one spot, and accepted the assessment of the beekeeper as to the requirements for space and availability of vegetation to support the production of honey.
61. The Board accepted the beekeepers' comments that the 12.89-acre of available land on the subject property as appropriate to support 30 hives in a manner that is healthy and productive for both the bees and farmer. The Board was not convinced by the Respondent that less than 1-acre of land was needed for the bees to produce honey.
62. The Board was not persuaded by the Respondent's opinion that the physical space (312 SF) of the beehives is the determining factor for apiculture at the subject property.
63. The Board accepted that the land access agreement to provide access to the 12.89-acres on the subject property provides access to the farmer. The Board acknowledged that there is no need to maintain, repair, and collect honey from the hives without the activity of the bees. The Board concluded that if the bees did not have access to the land, there would be no honey to collect and accepted that the lease was broader than a lease to access the hives.
64. In summary, The Board finds the weight of evidence to support a classification of 12.89-acres of the subject property to be farm land, assessed at the farm land dry pasture rate as per the Ministers Guidelines at \$350/acre.

Issue 2:

Is the area occupied by the beehives on the site sufficient to change the parcel to farm land?

65. The Board accepted the beekeepers' comments that the 12.89-acre of available land on the subject property is appropriate to support 30 hives in a manner that is healthy and productive for the bees.
66. The Board acknowledged *MRAT* s. 7(1) and 7(3)(a)(c) as follows:

7(1) The valuation standard for a parcel of land is

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- (a) *market value, or*
- (b) *if the parcel is used for farming operations, agricultural use value.*

7(3) Despite subsection (1)(b), the valuation standard for the following property is market value:

- (a) *a parcel of land containing less than one acre;*
- (c) *an area of 3 acres located within a larger parcel of land where any part of the larger parcel is used but not necessarily occupied for residential purposes;*

- 67. The Board was not persuaded by the Respondent's opinion that the physical space of 312 SF where the hives are located is the only space where apiculture is taking place.
- 68. In summary, the Board finds the weight of evidence supports the farm land designation based on the area of the subject property required to conduct apiculture.
- 69. The Board notes that in accordance *MRAT* s. 7(3)(c) 3-acres must be valued at market value.

Issue 3:

Does the weight of evidence support a change to the market value?

- 70. The Board was persuaded by the weight of evidence that the ALH zoned property at 17014 338 Ave East, which sold in April 2023, provides a reasonable comparable for the subject property with a sale price of \$1,250,000 (\$187,970/ acre). The property is near the subject with exposure to Northridge Drive and also zoned ALH. The Board noted the objection from the Respondent regarding the property's roll number starting with 170. The Board also noted conflicting evidence presented regarding the property being in Foothills County versus the Town of Okotoks.
- 71. Under farm land, if there is a residence on site, an area of 3-acres is assessed at market value. The Board supports an assessment of 3-acres of residential land at \$187,970/ acre.
- 72. The Board considered the land transfer documentary evidence presented indicating a mortgage of \$8,000,000.00 encompassing three (3) properties owned by the developer making it difficult to assess the portion that would have been allocated for the subject property. The Board gave little weight to this evidence.
- 73. The Board acknowledges that a complaint was not presented for the 2023 assessment year

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and does not accept that this action represents acceptance of the assessment amount. The Board appreciates that many factors could be related to the developer not submitting a complaint which are well beyond this Boards purview to speculate on.

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74. The Board understood the Respondent's awareness of anticipated future development as the best and highest use for this property. The Board was persuaded that for the 2024 assessment year that the subject property remained an un-serviced parcel of land that now houses 30 beehives along with a residential component.
75. The Board questioned the validity of the current 2024 assessment which indicates an amount of \$3,575,250 allotting \$0 for the residence (good quality), basement (finished), shop, and beehives. The Board noted this assessment reflects an assessment amount brought forward based on a decision from a CARB ruling in 2022, which directed that years' assessment be based on the sale of the subject property that occurred in January 2016.
76. The Board noted that the subject property's assessment has a calculated rate of \$224,984/acre
77. The Board reviewed *MGA s.289* and *MRAT s. 6* legislating market value assessment as the 'valuation date of July 1' and 'characteristics and physical condition date of December 31' of the assessment year. The Board noted changes to the subject property through the placement of beehives during the assessment year.
78. In summary, the Board is mindful of prior Board decisions and has the utmost respect for decisions rendered by other Board panels. The Board acknowledges that those decisions reflect issues and evidence considered in those prior hearings and are not binding on this Board. The documentary evidence and arguments considered by other panels in their hearings do not reflect the evidence presented at this complaint.
79. The decisions of this Board are based solely on the evidentiary submissions and arguments related to the issues identified for this hearing.

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Board's Decision

80. The assessment is reduced to a total assessment amount of \$568,512.00.
81. The breakdown is as follows:
- 12.89-acres is farm land at \$350/acre and the assessment is changed to \$4,512.00; and
 - 3-acres is residential at market value of \$187,970/acre is changed to \$564,000.00.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta this 22nd day of August 2024.

----Original Signed----

A. Eastham
Presiding Officer

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APPENDIX "A"
DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|------------|---|
| C-1 | Complainant Disclosure (257 pages) |
| R-1 | Respondent Disclosure Part 1 (60 pages) |
| R-2 | Respondent Disclosure Part 2 (60 pages) |
| C-2 | Complainant Rebuttal (281 pages) |

An application for Judicial Review may be made to the Court of King's Bench with respect to a decision of an assessment review board.

An application for Judicial Review must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to

- (a) the assessment review board;*
- (b) the Complainant, other than an applicant for the judicial review;*
- (c) an assessed person who is directly affected by the decision, other than the Complainant;*
- (d) the municipality; and*
- (e) the Minister.*