

Central Alberta

Regional Assessment Review Board

Decision #CARB 0262 550/2013

Complaint ID: 550/551

Roll No.: 931306/931555

REGIONAL ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: OCTOBER 1, 2013

PRESIDING OFFICER: CATHYRN DUXBURY

BOARD MEMBER: RON SCHALLER

BOARD MEMBER: VELMA KEELER

BETWEEN:

TRIET Holdings 10 Corporation

Complainant

-and-

The City of Red Deer

Respondent

This is a complaint to the Central Alberta Regional Assessment Review Board (hereinafter "the Board") in respect of a property assessment entered in the 2013 Assessment Roll as follows:

ROLL NUMBERS:	931306	931555
MUNICIPAL ADDRESS:	3310 50 AVE	3210 50 AVE
ASSESSMENT	\$26,168,600	\$2,165,500

The complaint was heard by the Composite Assessment Review Board on the 1st day of October, 2013, in the City of Red Deer.

Appeared on behalf of the Complainant: Stephen Cook, Agent, Colliers International Valuation & Advisory Services

Appeared on behalf of the Respondent: Rob Kotchon, Assessor
Brian Lutz, Red Deer City Assessor

JURISDICTION

The Board has been established in accordance with section 456 of the *Municipal Government Act R.S.A. 2000, c. M-26* (hereinafter "the MGA") and the *City of Red Deer Assessment Review Board Bylaw 3441/2009*.

Neither party raised an objection to any Board member hearing the complaint.

No procedural or jurisdictional matters were raised by either party.

PRELIMINARY MATTER

[1] At the outset of the hearing, the Respondent requested that the Board dismiss the complaint pursuant to s. 295(4) of the MGA on the ground that the Complainant failed to comply with s. 295(1). The Complainant objected to the hearing of the preliminary matter on the basis that the issue raised by the Respondent was already brought before a panel of the Board on June 27, 2013, and the Respondent's request denied. The Complainant referred the Board to Decision # CARB 0262 550/2013, and the Board finding that "...the original preliminary matter before the Board fails, and the clerk has been ordered to schedule a merit hearing on the original complaints." [Decision # CARB 0262 550/2013 at para. 21]

[2] The Respondent argued that the request to dismiss the complaint pursuant to s. 295(4) of the MGA was denied by the previous panel based on a technicality; in particular, that the Respondent's disclosure was not complete and therefore found inadmissible [Decision # CARB 0262 550/2013 at para. 21]. The Respondent took the position that all that was decided by the previous panel was that there was no evidence to proceed to hear the preliminary matter. The Respondent argued that in the interests of natural justice, this panel should hear the Respondent's evidence in support of their request to dismiss the complaint that the previous panel refused to hear.

[3] The Board adjourned the hearing to review Decision # CARB 0262 550/2013 from the June 27, 2013 preliminary hearing. When the hearing was reconvened, the Board asked both parties to confirm whether the preliminary hearing scheduled for June 27, 2013 was scheduled to hear an application by the Respondent to dismiss the complaint pursuant to s. 295(4) of the MGA on the ground that the Complainant failed to comply with s. 295(1). Both the Complainant and the Respondent so confirmed, and advised that the merit portion of the application did not proceed because the application was dismissed after the Respondent's disclosure was found by the Board to be incomplete and therefore inadmissible.

[4] Given that the preliminary matter the Respondent asked this panel of the Board to determine was already before a previous panel of the Board and a decision rendered, this panel of the Board has no jurisdiction to hear the identical application anew. If the Respondent was dissatisfied with the decision rendered by the previous panel, the Respondent had the option to appeal that decision. Section 470(1) of the MGA directs that an appeal of a decision of an assessment review board be heard by the Court of Queen's Bench. The Board notes that a statement to this effect is found at the end of Decision # CARB 0262 550/2013.

[5] The Board directed the parties to proceed to the merits of the complaint.

BACKGROUND

[6] Roll number 931306 is a full service Sheraton Hotel located at 3310 50 Avenue, in Red Deer, Alberta (hereinafter "the subject property"). The subject property consists of 242 accommodation units, and includes restaurants, bars, convention and meeting facilities, banquet amenities, and a free standing liquor store. Roll number 931555 for 3210 50 Avenue is the parking lot adjacent to the hotel.

ISSUE AND FINDINGS

[7] At issue is whether the Respondent used the correct inputs in the income approach to valuation of the subject property.

[8] **Complainant:** At the outset of the Complainant's presentation the Complainant advised the Board that it would not be disputing the assessment of the parking lot in the amount of \$2,165,500. Rather, the Complainant's presentation would be entirely focused on the subject property, the Sheraton Hotel.

[9] The Complainant noted that the current assessed value of the subject property is a \$3,000,000 increase over the 2012 assessment, which was \$23,079,300. The Complainant disputes that the market value of the subject property has increased. On the contrary, the Complainant argues, the market value of the subject property has decreased since 2012 to \$22,505,000.

[10] In support of their contention that the market value of the subject property has decreased, the Complainant referred the Board to a table entitled "Alberta Hotel Occupancy Rates – Excluding Mountain Resorts" [C1, p. 18]. This table shows a downward trend for occupancy rates over the five year period 2004 to 2009. The Complainant acknowledged that this information is dated, but submitted that it is evidence of a downward trend in market values of hotel properties in Alberta.

[11] The Complainant submitted the pro-forma used by the Respondent to prepare the 2013 assessment for the subject property [C1, pp. 14 and 29]. The Complainant agrees with the Respondent that the income approach is the correct approach to be taken in valuing the subject property, and that using a three year stabilized average is appropriate. However, the Complainant noted that the 2011 figures for the subject property used by the Respondent to determine a three year stabilized average were estimated values. The Complainant argues that the actual figures from Exhibit C1, pages 39 to 40 should have been used. When the actual 2011 figures for the subject property are used, and all other values used by the Respondent remain the same, the assessed value of the subject property calculates out to \$22,505,000 [C1, p. 31]. This value equates to \$92,996 per accommodation unit.

[12] Although the Complainant is of the view that the income approach is the proper approach to valuing the subject property, the Complainant takes the position that more than one approach should be looked at and that the approaches should support each other. It is the Complainant's position that the direct sales comparison approach to valuing the subject property produces a value per room consistent with the \$92,996 per room value obtained using the income approach.

[13] The direct sales comparison evidence submitted by the Complainant can be found on pages 22 to 28 and pages 46 to 48 of Exhibit C1. The four sales comparables detailed on pages 22 to 28 are Alberta sales that indicate a per unit value range of \$60,920 to \$146,829 with a range in size of 60 to 107 units. The Complainant acknowledged that these sales are dated, being from 2009. On page 46, the Complainant provided a Hospitality Valuation Services review of 25 Alberta hotel sales that took place in 2012. After removing those sales the Complainant referred to as "outliers", the sales comparables relied on by the Complainant suggest a per unit average of \$92,203 [C1, pp. 47 – 48]. The Complainant acknowledged that some of these sales are post facto, but argued that common sense suggests that negotiations would have been taking place for a considerable time prior to the listed date of sale, and can still be considered.

[14] During summary argument the Complainant pointed out that the only evidence provided by the Respondent to support the assessed value of \$26,168,600 is a newspaper article detailing the boasts of a new owner attempting to drum up business, and a single building permit. The Complainant noted that the Respondent failed to show how the work detailed in the building permit impacted the market value of the subject property, and failed to submit evidence of a single equity or sales comparable. The Complainant also noted that the Respondent failed to perform any time adjustment to the 2008 sale of the subject property.

[15] In these circumstances, the Complainant requests that the assessed value of the subject property be reduced to \$22,505,000.

[16] **Respondent:** The Respondent takes the position that the assessed value for the subject property of \$26,168,600 is correct. This value equates to \$108,135 per room.

[17] The Respondent argued that the best indication of market value for any property is an arm's length transaction between a willing buyer and a willing seller. The Respondent submitted the transfer documents from the 2008 sale of the subject property to the current owner [R1, pp. 65-69], a transaction that was undisputedly a market transaction. These documents reveal that the subject property was purchased in 2008 for \$37,592,000. Removing the land value for the parking lot, and reducing the resultant amount by 15% to account for furniture, fixtures, and equipment, produces a market value for the subject property of \$30,253,000 in 2008. The Respondent maintains that the market value of the subject property has increased since then due in large part to the renovations completed by the owner.

[18] The Respondent argues that the 2013 assessment is a reflection of the purchase price and all of the improvements that were made after the 2008 sale. Regarding these

improvements, the Respondent points to an article published in the *Red Deer Advocate* shortly after the 2008 sale wherein the president and chief executive officer of the owner indicated the intention to invest \$8,000,000 to renovate the subject property [R1, pp. 70-71]. The Respondent also provided a copy of a building permit dated November 5, 2010, which details renovations to the subject property with a construction cost of \$3,338,500 [R1, pp. 72-73]. This building permit, the Respondent argued, is evidence that renovations of the subject property took place.

[19] The Respondent's position is that it is only logical that the improvements undertaken by the owner increased the market value of the subject property. Referring to the information submitted by the Complainant at pages 39 to 40 of Exhibit C1 detailing actual income, expense, and other information for the subject property, the Respondent noted that the subject property saw an increase in occupancy levels for the period of January 1 to June 30, 2012. This increase in occupancy information, the Respondent argued, further suggests an increase in the market value of the subject property.

[20] The Respondent takes the position that the comparables provided by the Complainant should not be relied upon because the Complainant failed to provide sufficient details or analysis comparing the sales to subject property. The Respondent maintains that the comparables are poor ones, differing negatively from the subject property in size, location and amenities. Notwithstanding that the comparables submitted by the Complainant are poor ones, the Respondent noted that three of the sales discussed on pages 22 to 28 of Exhibit C1 suggest a per unit value higher than the per unit value assessed by the Respondent. The Respondent also noted that these sales are dated, and many of the 2012 sales relied upon by the Complainant are post facto.

[21] In these circumstances, the Respondent submits that the Complainant has failed to meet the burden of proving that the assessed value is unfair or inequitable.

[22] **Board Findings:** The Board acknowledges that the Complainant's evidence regarding the direct sales approach was provided in support of the income approach to value that was actually used to come to an assessment of the subject property. However, given the lack of information provided about the properties sold to allow sufficient comparison to the subject property, and given the date of the sales, the Board placed little weight on the comparables provided by the Complainant. Similarly, the Board placed little weight on the 2008 sale of the subject property. The Board notes that the Respondent's arguments regarding the value of the renovations intended or completed did not assist the Board in making its decision as no evidence was provided to establish the full extent of the renovations or the impact the renovations had on the market value of the subject property.

[23] The Board notes that the Respondent did not advise the Board as to whether the assessment for the subject property was prepared using 'typical' or 'actual' values. This is important because if typical market values were used in the assessment of the subject property, then the Complainant's actual values should only be used to come to an assessed value if the Complainant can prove that the subject property was atypical.

[24] To determine whether actual or typical values were used by the Respondent to prepare the assessed value of the subject property, the Board compared the 2010 values found in the pro-forma used by the Respondent to prepare the 2013 assessment for the subject property [C1, pp. 14 and 29] and the actual values provided by the Complainant for the subject property [C1, pp. 39-40]. The 2010 values were chosen because 2010 is the only year where the Board has evidence of both the values used by the Respondent and the actual values of the subject. The Board found at least eight numbers to be consistent between these two documents. The similarities between these two documents are too great to come to any conclusion other than the Respondent has historically used actual values to determine the assessed value of the subject property, and attempted to do so for 2013. The Board also notes that the pro-forma used by the Respondent to prepare the 2013 assessment has the word "estimated" above the 2011 values, which also suggests that typical or market values were not used.

[25] The parties are in agreement that the income approach to value is the correct approach to be taken in valuing the subject property, and that using a three year stabilized average is appropriate. The Respondent provided no explanation as to why or how the estimated values for 2011 were arrived at. The Complainant has submitted the actual values for the subject property for the year the Respondent has estimated, and the Respondent provided no evidence or argument to suggest that these actual values were incorrect. The Board finds that the subject property's actual values should be used to come to an assessment of the subject property for 2013. When the actual 2011 figures for the subject property are used, and all other values used by the Respondent remain the same, the assessed value of the subject property calculates out to \$22,505,000.

SUMMARY

[26] For the reasons noted above the assessed value of the subject property, being roll number 931306, is VARIED to \$22,505,000. Because the Complainant advised the Board that it would not be disputing the assessment of the parking lot, the assessment of the parking lot, being roll number 931555, is CONFIRMED at \$2,165,500.

Dated at the City of Red Deer, in the Province of Alberta this 18th day of October, 2013 and signed by the Presiding Officer on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Sonya Parsons, on behalf
Cathryn A. Duxbury, Presiding Officer

This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"

Documents Presented at the Hearing
 and considered by the Board

<u>NO.</u>	<u>ITEM</u>
1. A1	Hearing Materials
2. C1	Complainant's Disclosure
3. R1	Respondent's Disclosure

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Decision No.: CARB 0262 550/2013			Roll No. 931306/931555	
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Other Property Types	Hotel/Motel	Information Exchange (Types 1 to 6)	Insufficient/No Response Request
CARB	Other Property Types	Hotel/Motel	Income Approach (Types 1 to 6)	