

Decision Number: CARB 0194 634/2014

Complaint ID: 634

Roll Number: 194030000020

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: SEPTEMBER 4, 2014

PRESIDING OFFICER: V. HIGHAM

BOARD MEMBER: A. KNIGHT

BOARD MEMBER: D. MOORE

The Central Alberta Regional Assessment Review Board has been established in accordance with section 456 of the *Municipal Government Act R.S.A. 2000, ch M-26* (the Act).

BETWEEN:

LACOMBE INVESTMENTS INC.

Complainant

and

CITY OF LACOMBE

Respondent

The matter was heard in respect of a complaint to the Central Alberta Regional Assessment Review Board relative to the following assessment:

ROLL NUMBER: 194030000020

MUNICIPAL ADDRESS: 5001 52nd Street, Lacombe, Alberta

ASSESSMENT: \$1,624,740

This matter was heard by a Composite Assessment Review Board (the Board) on the 4th day of September, 2014, in the Council Chambers of the Municipal Office Building at the City of Lacombe (the City).

Appeared on behalf of the Complainant:

- No one appeared for the Complainant

Appeared on behalf of the Respondent:

- Warren Powers Assessor
- Eloise Comrie Assessor

PROCEDURAL OR JURISDICTIONAL MATTERS:

[1] No party objected to the composition of the Board as introduced at the hearing.

[2] All disclosure materials were received in a timely fashion.

[3] At the hearing, the Respondent introduced a motion to dismiss the subject complaint on grounds that the Complainant failed to meet its initial burden of proof calling the subject assessment into question. Since no one appeared for the Complainant, the Board heard comments from the Respondent in support of this motion, and recessed proceedings to consider the matter.

[4] The substance of this decision will address the conclusions of the Board with respect to this preliminary request.

BACKGROUND:

[5] The subject is a commercial property located at 5001 52nd Street in the City of Lacombe, built in 1978, comprising 25,489 square feet (sf) of space, on four lots (each lot being 6,000 sf in size). The building is demised into ten individual office or retail spaces.

PRELIMINARY ISSUE: MOTION TO DISMISS THE COMPLAINT

[6] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. As a preliminary matter, the Respondent raised the following issue for the Board's consideration:

- 1) Should the subject complaint be dismissed on the grounds that the Complainant failed to meet an initial burden of proof calling the subject assessment into question?

Complainant's Position:

[7] Since the Complainant did not appear at the hearing, no submissions were heard on behalf of the Complainant in respect of the Respondent's motion to dismiss.

Respondent's Position:

[8] The Respondent argued that the onus of proving the subject assessment is incorrect rests with the Complainant, and that in this case, the Complainant failed to meet this burden of proof. The Respondent argued that the Complainant's evidence was lacking in scope and substance, and was therefore not sufficiently compelling to permit the Board to disturb the assessment.

[9] The Respondent argued that the Complainant failed to submit "any comparable market sales, cost calculations, market leases, or any other market information to show support for an alternate assessed value" (Exhibit R1, p.5).

[10] The Respondent also submitted a number of CARB, MGB, and court decisions (Exhibit R1, pp.6-9) in support of this position, including CARB 0098 249/11 (*927094 Alberta Ltd v. City of Edmonton*), which dismissed a complaint having determined that the Complainant failed to provide disclosure in accordance with legislated requirements. The CARB in that case stated:

“The onus of proving that an assessment is wrong or unfair lies with the Complainant. In the absence of any compelling and admissible evidence in support of the issues raised in the complaint form, the Board concludes that the Complainant failed to discharge its burden of proof, and accordingly dismisses the complaint.”

[11] The Respondent asked the Board to pay particular attention to CARB 0098 170/10 (*Nicholas Dragich & John Dragich v. City of Edmonton*), which spoke to the same issue governing the motion to dismiss in the subject hearing: the Complainant’s lack of compelling evidence. The CARB in that decision stated:

“The Board reviewed the thirty nine page document submitted by the Complainant and there is no market evidence to support the Complainant’s position that the subject assessments are incorrect. Given that there is no evidence to respond to, it is not necessary for the Board to hear the Respondent’s evidence and argument. Accordingly, the complaints are dismissed.”

[12] The Respondent relied on all ten CARB, MGB, and court decisions referenced in the City’s submissions in support of the requested motion to dismiss the subject complaint.

BOARD’S FINDINGS AND REASONS:

[13] The Board finds that the Complainant failed to meet its burden of proving, in a sufficiently compelling manner, that the subject assessment is incorrect.

Complainant’s Burden of Proof:

[14] Having reviewed all of the Complainant’s written submissions, the Board concludes that every page reflects details of the subject’s *actual* data and information, with no supporting evidence relative to the surrounding *typical* market in which the subject operates.

[15] Section 2 of the *Matters Relating to Assessment and Taxation Regulation* (the “MRAT”) states that:

- (2) *An assessment of property based on market value*
 - (a) *must be prepared using mass appraisal,*
 - (b) *must be an estimate of the value of the fee simple estate in the property, and*
 - (c) *must reflect typical market conditions for properties similar to that property.*

[16] The Complainant submitted no evidence to establish what “typical market conditions” for the subject property are in the Lacombe market, against which to compare the subject’s *actual* data, to determine if the subject is fairly and equitably assessed.

[17] Without any market evidence, the Complainant cannot argue an alternate requested value that reflects “typical market conditions” for properties similar to the subject, and therefore fails to meet its burden of proof.

Respondent's Section 467 Argument:

[18] In passing, the Board would also comment on the following paragraph submitted by the Respondent in its submissions (Exhibit R1, p.5):

All the non-residential properties in the City of Lacombe are assessed on a Cost Approach Basis. There are no non-residential properties assessed using the Income Approach to value. So, as the legislation above states, the subject property is assessed taking into consideration the assessments of similar properties in the same municipality.

To alter the assessment based on the Complainant's argument would be in contravention of section 467(3)(c) of the MGA. [Emphasis added]

[19] The Board firmly disagrees. Section 467(3)(c) of the *Act* states:

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration:

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

[20] The Board affirms that the Complainant has a right to argue an alternate assessed value for the subject property based on the income (or any other) approach to value, notwithstanding the subject assessment is derived on the cost approach. All three approaches to market value (income, cost, and direct sales comparison) are legitimate and defensible, so long as correct data and principles are applied consistently.

[21] Had the Complainant submitted market evidence to support an alternate assessed value reflecting "typical market conditions" based on an income approach, the Board would certainly have considered varying the subject assessment based on the evidence.

[22] The unconventional fact that all non-residential properties in Lacombe are assessed on the cost approach may make these assessments *equitable* across a broad category, but it does not necessarily make them all *fair*. Section 467(3) requires an assessment to be both *fair and equitable*; either of these elements (or both concurrently) are proper grounds for a complaint.

[23] Had the Complainant established through market evidence that the subject assessment (derived on a cost approach) is in fact *not fair* (based on an income approach argument), section 467(3)(c) of the *Act* definitively empowers the Board to alter such an assessment to reflect fair and typical market conditions.

SUMMARY

[24] The Board concludes that the Complainant failed to meet its initial burden of proof in the subject complaint, by omitting to submit *typical* market data and information against which to compare the subject's *actual* performance.

[25] For the reasons noted herein, the Board grants the Respondent's motion to dismiss the subject complaint.

DATED AT THE CITY OF RED DEER, ALBERTA THIS 7th DAY OF October, 2014 and sign on behalf of the Presiding Officer for all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Al Knight, Board Member, on behalf of
V. Higham, 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 this decision.

Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"**Documents Presented at the Hearing
and Considered by the Board****NO.****ITEM**

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| 1. A1 | Agenda and Hearing Materials |
| 2. C1 | Complainant's Disclosure |
| 3. R1 | Respondent's Disclosure |

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Decision Number: CARB 0194 634/2014			Roll Number: 19403000020	
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office/Retail	Stand Alone	Income Approach	Net Market Rent/Lease Rates