

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

691363 Alberta LTD. (as represented by Colliers International), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P. Petry, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
R. Kodak, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 064027154

LOCATION ADDRESS: 4231 Bow Trail S.W.

FILE NUMBER: 66054

ASSESSMENT: \$828,500

This complaint was heard on 24th day of August, 2012 and the 14th day of September at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue N.E. Calgary, Alberta, Boardrooms 12 and 2 respectively.

Appeared on behalf of the Complainant:

- J. Havrilchak

Appeared on behalf of the Respondent:

- S. Bazin

Property Description and Background

The subject property is improved with a 1969 one and one half story apartment complex which is located in market zone MR4. This building has a total of 6 units, 5 one bedroom units and one two bedroom unit.

The subject property has been valued by the Assessor using the gross income multiplier (GIM) approach to value. The Complainant argues that the Respondent has used a GIM of 16 and a GIM of 13 is more appropriate for the subject. The Complainant also indicates that the subject should be recognized as having a chronic vacancy problem and be valued using a 15% vacancy allowance.

Preliminary Issues

- [1] At the outset of the hearing on August 24, 2012 the Respondent, City of Calgary (City) raised a preliminary issue concerning the admissibility of certain evidence advanced by the Complainant. The City at page 3 of its disclosure indicates that the Complainant failed to comply with its Assessment Request For Information (ARFI) which was sent to the Complainant on March 30, 2011. Among other items of information this request seeks information on vacancy and rent rolls. The complaint before the CARB in this case centres primarily on two issues, the vacancy allowance and the GIM multiplier used by the Assessor in reaching the assessed value for the subject property.
- [2] The City's letter dated March 30, 2011, that accompanied the ARFI stated that this information must be received no later than 4:30 pm on May 2, 2011, the due date.
- [3] This letter also includes a section after the signature head "Failure to Comply to Requests" that goes on to say that if you do not comply with this information request, one of the following provisions may apply to your disclosure information. First, if you fail to provide the information requested within 60 days from the date of this letter, Section 295(4) of the Municipal Government Act (MGA) states that you may not file a complainant against an assessment. Second, Section 5 (3) of the Matters Relating to Assessment Complaints Regulation (MRAC) (AR 310/2009) states that the local assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under 294 or 295 of the MGA but was not provided to the assessor.
- [4] The City also provided a copy of its letter to the Complainant dated May 18, 2011. This letter essentially is a reminder of the fact that the ARFI has not been returned and again raises the potential consequence of being precluded from making a complaint against the

2012 assessment in accordance with section 295 of the MGA. This letter also refers to the previous letter of March 30, 2011 and to a reminder letter sent on April 18, 2011. The letter presumably sent on April 18, 2011 was not in evidence before the CARB. The City also provided a similar reminder letter to the Complainant dated May 27, 2010 which related to the 2010 ARFI. The Respondent stated that there had been no response from the Complainant to their requests for information in 2010.

[5] All of the above noted correspondence was sent to:

691363 Alberta Ltd.

110 Coral Reef Crescent N.E.

Calgary, AB T3J 3Y5

[6] The Complainant indicated that he believed this to be the correct address for the property's mail.

[7] The Respondent argued that based on the fact that the information requested by the City was needed to prepare the assessment and the City had done all it could be expected to do to have the Complainant comply with its request; the CARB is asked to invoke the provisions of section 295(4) of the MGA and dismiss the complaint. In the alternative the CARB is asked to bar the Complainant's evidence related to the subject property's vacancy experience and the evidence respecting the rent rolls, in accordance with section 9 (3) of MRAC.

[8] The Respondent also referred to a corporate search it had done and the person signed the Agent Authorization form, Mr. Andor Horvath, is not shown as an officer of the owner for 691363 Alberta LTD.. Also this form indicates the owner to be a different entity 591363 Alberta LTD. and a corporate search respecting this owner's identification has not produced any information. It is possible that this is a simple typographical error, however, this would still leaves the question as to Mr. Horvath's authority to engage Colliers International as agents for the owner.

[9] The Complainant argued his client indicates that the letters submitted by the Respondent were not received and the Respondent has not proven that they were sent or received by the complainant. These letters do not have City of Calgary letterhead and it is unreasonable to suggest that they are the actual letters sent or copies of letters sent. The Respondent explained that the letters are in their system without letterhead. When the letters are sent the printing of the letters merges the letterhead and the letter substance at that time.

[10] The dates the Respondent claims the letters were sent on page 3 of their disclosure do not match the dates that are on the alleged letters except for the March 30, 2011 date. The Complainant argued that this fact supports its position that the letters are not true letters and they were not sent.

[11] The Complainant indicated that the Respondent had supplied the 2012 related request for information but did not supply the 2011 request for information which would be the relevant request to this complaint.

[12] The Complainant referred the CARB to the March 30, 2011 letter where in it states that the information requested must be filed by not later than May 2, 2011. This allows only 32 days for the Complainant to provide the information, however, 295 (4) allows 60 days to comply with such a request. The City has no authority to require a taxpayer to comply differently than that required in the MGA. The CARB should therefore on this basis alone, deny the Respondent request to disallow any of the Complainant's evidence.

[13] The Complainant argued that the information was not required by the Assessor to prepare the assessment as the assessment was indeed prepared absent the information sought from the Complainant and therefore there was no harm to the City. Also the Assessor has not shown why the information was required. Further the penalty which the Respondent seeks to have the CARB impose is far too severe. A complaint should not be dismissed based on a technicality such as the one suggested by the Respondent.

[14] The Complainant provided the CARB with a Alberta Court of Appeal decision, Boardwalk Reit LLP v. Edmonton (City). The Complainant argued that this decision supports its rebuttal to the Respondent's application in this matter.

[15] With respect to the corporate name and authority of Mr. Horvath, the Complainant stated that he was sure Mr. Horvath does have the authority to engage Colliers but cannot provide that proof at this moment as he was not aware this would be raised as an issue. The Complainant also could not be certain of the correct corporate name at this point but suggested that had he been made aware of this problem before the hearing he would have been prepared with information to resolve the matter.

Board's Decision

[16] The CARB decided that the matters relating to whether or not Mr. Horvath has the authority to engage Colliers International as agents is a matter that must be resolved before the merit hearing can proceed and while the corporate name issue appears to arise from a typographical error that too should be clarified. To this end the CARB indicated it would adjourn the hearing to September 14th, 2012 to allow the Complainant and the Respondent time to address these matters. The CARB further clarified that this time would be used to consider the balance of the preliminary issues raised by the Respondent and that the parties should expect the CARB to deliver its oral decision on these issues at the commencement of the hearing to be reconvened at 9:00am September 14th, 2012.

[17] On September 14th, 2012 the CARB received documentation marked R-2 from the Respondent in the form of a Land Titles Certificate showing the owners of the property in dispute to be 691363 Alberta LTD. and the corporate search for this property and owner showing its officers and the address referred to above as the correct address. The Complainant also provided a document signed by two officers of 691363 Alberta LTD., authorizing Mr. Horvath to make decisions on behalf of the owners including the hiring of Colliers in this instance. These documents satisfied both the Respondent and the CARB respecting the authority of Mr. Horvath to engage Colliers and to clarify the correct name of the owner of the property under complaint.

[18] Also on September 14th, 2012 the CARB provided its oral decision respecting the Respondent's application to dismiss the complaint under section 295 of the MGA or in the alternative to bar certain aspects of the complainant's evidence under the provisions of section 9 (3) of MRAC. The oral decision of the CARB briefly touched on its written decision that follows.

[19] Section 295 of the MGA sets out the specific consequences for not responding to the Assessor's requests for information under certain circumstances.

"Duty to provide information"

295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.

- (2) An agency accredited under the *Safety Codes Act* must release, on request by the assessor, information or documents respecting a permit issued under the *Safety Codes Act*.
- (3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.
- (4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request."

[20] The City's letters were all addressed to the correct address and it is unlikely that all were not sent or that all would not have been received. The most important of these letters is the original request dated March 30, 2011. This letter only provided 32 days (not allowing for mail delivery) for the Complainant to file its response. The actual time allowed for the Complainant's responses is 60 days under the provisions of section 295 (4) of the MGA. The Respondent's cover letter for the ARFI misquotes the reference to MRAC by referring to section 5 (3). This section deals with LARB complaints not to CARB complaints which should be 9(3).

[21] The Respondent did not provide compelling evidence as to why the information requested was necessary for the assessment of this property or how it would be used in developing the assessment. The decision of Justice Cote, *Boardwalk Reit LLP v. Edmonton (City)* supports the importance of these two features of such requests for information under section 295 of the MGA. It is not sufficient to suggest that the information sought is needed to assist the Respondent in the development of its model for mass appraisal.

[22] After considering all of the matters referred to above the CARB decided that the basis for dismissal under section 295 of the MGA is insufficient and therefore the complaint will be heard.

[23] The Respondent argued that the Complainant's evidence should not be permitted under MRAC section 9 (3). The ARFI does not appear to seek detailed information respecting vacancy but only asks for the number of units currently vacant at a particular point in time. The Complainant's evidence, however, appears to go into a historical review of vacancy weighted over a lengthy period. The ARFI does not appear to seek direct information respecting the property's condition which is another matter raised by the Complainant. The other challenge in the complaint is with respect to the GIM value which only arises from sold properties.

[24] The CARB concluded that the requested information made through the City's ARFI process is not sufficiently specific in this case to warrant a bar to the evidence submitted by the Complainant under the provisions of MRAC section 9 (3) and therefore all of the Complainant's evidence will be allowed.

Merit Issues:

- [25] What is the correct fair and equitable GIM for the subject property?
- [26] What is the correct vacancy allowance for the subject property?

Complainant Requested Value:

[27] The Complainant requests a reduction in the assessment to \$650,000.00.

Board's Decision in Respect of Each Matter or Issue:

[28] The CARB decision is that the GIM of 16 that was applied in reaching the assessment is correct, fair and equitable.

[29] The vacancy allowance for the subject is not adjusted from the 4.5% applied by the Assessor.

Summary of the Party's Positions

Complainant

[30] The Complainant Indicated that the subject has direct exposure to Bow Trail, however, there is restricted access to the site because of the high traffic volumes. In addition to the Bow Trail traffic issue, the age and condition of the subject property also have a negative effect on the vacancy experienced by this property. Black and white photographs were provided to show the condition of the property.

[31] The Complainant provided information showing average vacancy for 2009 at 16.6%, 2010 at 18.0% and 2011 at 11.1%. Based on this information the Complainant requested that the CARB agree to and apply a vacancy allowance of 15% when determining the assessment for the subject property.

[32] The Complainant provided the rent roll for the subject over the period December 2009 through January 2011. There was no analysis of this information, however, the Complainant indicated through its pro-forma that the average of the various rates applicable to one bedroom units would be \$775 per month and the rate for the single two bedroom unit would be \$1,075 per month for a total potential gross income of \$59,400 per month.

[33] The Complainant applied its proposed 15% vacancy allowance to the potential gross income value of \$59,400 and then applied a GIM of 13.00 which resulted in a proposed new assessed value of \$650,000. The GIM of 13 apparently had been used by the assessor for other residential properties.

[34] The Complainant also introduced a Queen's Bench decision and a decision of the City of Calgary CARB which it argued support the position of the Complainant in this case.

Respondent

[35] The Respondent suggested the photographs of the subject property show it to be in typical condition for properties of its age and the property is well located and should be assessed in the same manner as other similar properties.

[36] The Respondent indicated that the GIM of 13 may have been used for some other property group but the subject property has fewer than 9 units and the GIM applied to small multi-family properties similar to the subject is 16.

[37] The City is obliged to apply typical factor values and in this case the Complainant appears to mixing typical and actual data which cannot be relied upon.

[38] The Respondent has assessed the subject using the same methodology and typical values that have been applied to all other similar multi-family properties. The parameters applied to this property are as follows: The income is based on typical, the typical vacancy allowance of 4.5% and a gross income multiplier of 16. In the case of the subject these parameters yield an assessment of \$828,500.00 and this value should be confirmed by the CARB.

Findings and Reasons for the Board's Decision:

Issue 1) Gross Income Multiplier

[39] The complainant requested that the CARB apply a GIM of 13 in reaching its conclusion of market value for the subject property.

[40] While the Complainant suggested that a GIM of 13 has been applied to other properties there was no evidence introduced to show which properties or their comparability to the subject.

[41] There is simply no evidence on which to base a change to the GIM of 16 as applied by the Respondent.

Issue 2) Vacancy Allowance

[42] The Complainant's evidence shows that vacancy in the subject property has decreased from 18% in 2010 to 11.1% in 2011. This is a significant improvement and there is no evidence that such improvement in performance will not continue.

[43] The CARB also notes that the rental rates applied by the Complainant in its pro-forma are above the typical rents applied by the Respondent. Also from the rent roll it appears that the owner has been able to rent both the one bedroom and two bedroom units for as high as \$975 per month. These facts lead the CARB to conclude that the higher vacancy for the subject may be a result of the owner seeking higher than typical rents.

[44] While the Complainant argued for a higher vacancy allowance there was no evidence as to the extent and form of marketing that has been undertaken by the Complainant over the three year period in question. The CARB also noted long periods of vacancy for specific units. Unit 201 for example was vacant for a 10 month period and yet the CARB had no evidence as to why this would be or what effort was made to re-lease this unit.

[45] For all of the above reasons the CARB has decided to not make a change to the vacancy allowance at this time.

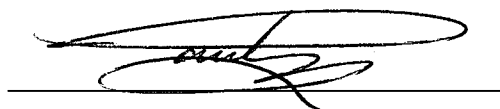
Summary

[46] The Complainant sought to have the CARB accept its application of a GIM of 13, however, there was no supporting evidence to justify this position. While the CARB was provided with vacancy data showing vacancy for the subject well over the typical applied by the Respondent, there were also other considerations to be weighed. The owner appears to seek rents above the market but in the end also appears not to generally attain these levels. This

may have resulted in longer periods of vacancies. The CARB notes long vacancies for specific units but did not have evidence as to why that is so or that appropriate marketing had been undertaken to keep the vacancy number to a minimum. For these reasons the CARB decided not to provide any adjustment to the typical vacancy allowance for the subject property. The assessment is therefore confirmed at a value of \$828,500.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF October 2012.



Paul Petry, Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. C3	Complainant Additional Documents
4. R1	Respondent Disclosure
5. R2	Respondent Additional Documents

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

470(2) Any of the following may appeal the decision of an assessment review board:

- (a) *the complainant;*
- (b) *an assessed person, other than the complainant, who is affected by the decision;*
- (c) *the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) *the assessor for a municipality referred to in clause (c).*

470(3) *An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) *the assessment review board, and*
- (b) *any other persons as the judge directs*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Multi Family	Walk-up Apt.	Small – Under Nine units	GIM vs Income	Vacancy