

**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:

Parke Seville Mortgage G.P. Ltd. (as represented by Altus Group Limited) COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J.Zezulka
Board Member, P. Charuk
Board Member, J. Pratt***

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 2011 Assessment Roll as follows:

ROLL NUMBER: 068135300

LOCATION ADDRESS: 239 - 12 Avenue SW

HEARING NUMBER: 68270

ASSESSMENT: \$10,290,000.

This complaint was heard on the 3rd day of October, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Three.

Appeared on behalf of the Complainant:

- J. Weber
- D. Mewha

Appeared on behalf of the Respondent:

- L. Cheng
- L. Wong

Board's Decision in Respect of Procedural or Jurisdictional Matters:

(1) At the outset of the hearing, the Complainant objected to the inclusion of certain documents contained in the Respondent's submission, specifically pages 5,6, and 7 of the Respondent's Assessment Brief, marked as exhibit R-1, on the grounds that the information had not been disclosed in accordance with Section 299 of the Municipal Government Act.

(2) The requests were submitted within the time frames specified in the Act.

(3) Sections 299 is reproduced as follows;

Access to assessment record

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and
- (c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

RSA 2000 cM-26 s299;2009 c29 s5
RSA 2000 cM-26 s300;2009 c29 s6

(4) Section 9(4) of The Matters Relating To Assessment Complaints Regulation (MRAC) leaves no room for discretion on the part of the Board.

A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

(5) The Complainant did not request additional information to that which was originally provided, nor did they request a compliance review under section 27.6 of MRAT, which provides a remedy when a taxpayer considers a response to an information request to be lacking or inadequate. However, this proposition has to assume that the Complainant is aware that an inadequacy exists in the first place.

(6) In the opinion of this Board, the wording in Sections 299 and 300 is clear. The Assessor must include all documents, records, and other information relating to the subject property, as well as key factors of the valuation model in responding to a request under these sections. That

applies whether or not a piece of information was specifically requested. To do otherwise is a violation of the Municipal Government Act. The Assessor could not provide any reason why the information in question was not provided when it was requested.

(7) Section 9(4) of MRAC is equally clear. The CARB is precluded from considering any evidence that was not provided in accordance with the regulations. Accordingly, pages 5, 6, and 7 of R-1 is excluded from these proceedings.

Property Description:

(2) The subject is an 11 storey apartment building having a gross floor area of 76,368 s.f. The building was built in 1973. As an apartment, the building contains 149 suites. However, the building is currently uninhabitable, and is not occupied. There is now a development permit pending for the conversion of the building to a Marriott, Fairfield Inn and Suites Hotel, slated to open in the fall of 2013. The land size is 17,623 s.f.

(3) According to the City, the assessment is allocated as 85.60 per cent residential, and 14.40 per cent non-residential. The Complaint did not address the validity of the allocation, and this Board will not wade into that issue.

Issues:

(4) The current assessment is based on the income approach to value, as an apartment building. The Complainant disputes the valuation method, arguing that the valuation as an income generating apartment is unrealistic, and does not reflect reality. Rather, the Complainant states that the subject was sold in October, 2011 for \$8,770,000, and this amount should represent the market value, and should hence be reflected in the assessment.

Complainant's Requested Value: \$8,770,000

Evidence / Argument

(5) The Complainant submitted evidence to show that the subject property was listed on the open market for about one year prior to the sale. In addition, there were at least two real estate companies involved. The listing price was \$11,135,000. The selling price was confirmed by the Complainant through a RealNet report, Land Titles registration, and Land Titles Transfer document.

(6) The Respondent argued that the sale was a court ordered sale, and the City does not consider a court ordered sale to be a valid indicator of market value. Rather, the City chose to rely on the Income approach to value based on the subject as an apartment building.

Board's Findings

(7) As far as the court ordered sale of the subject is concerned, the property was listed for sale on the open market for some time prior to the sale. There is no evidence to indicate that the transaction was anything but arms length. The 2010 Alberta Municipal Affairs Manual for recording and reporting information for assessment audit and equalized assessment states as follows;

"..... Sales by lending institutions of repossessed property are generally made at reduced prices and are

usually also rejected. However, these sales can be valid if exposed to the open market with a willing seller seeking the highest price." The Board finds that the property was exposed on the open market, and that the transaction was at arms length between a willing seller and a willing buyer. As such, this sale can be considered as a valid indicator of market value.

(8) This Board fails to understand why the City would disregard a documented sale of the subject, in lieu of a valuation method based purely on a conjectural situation that does not remotely reflect reality.

(9) Until the building is remodelled and there is a change in occupancy, the residential - non-residential allocation remains unchanged.

Board's Decision

(9) The assessment is reduced to \$8,770,000.

DATED AT THE CITY OF CALGARY THIS 15 DAY OF November, 2012.



Jerry Zezulka
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
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| 1. | C2 Evidence Submission of the Complainant |
| 2. | C2 Rebuttal Submission of the Complainant |
| 2. | R1 Respondent Disclosure; Assessment Brief |

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.

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).

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 MGB Administrative Use Only

Decision No. CARB 1948/2012		Roll No. 068135300		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Low rise apartment	Market value		Selling price as an indicator of value