

**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:

Narisa Developments Ltd., as represented by Riyaz Virani, COMPLAINANT,

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER

R. Roy, MEMBER

D. Steele, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a supplementary property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER: 201691128

LOCATION ADDRESS: 4816 17th Avenue N.W.

HEARING NUMBER: 65100

ASSESSMENT (Supplementary): \$1,792,500

This complaint was heard on Tuesday, the 13th of March, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *R. Virani*

Appeared on behalf of the Respondent:

- *S. Cook*

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

[1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property, "Victoria Gardens," is located at 4816 17th Avenue NW in Calgary's Montgomery neighbourhood. The subject property includes two three-storey wood-frame walk-up apartment buildings, each with 17 suites, on a 0.69 acre site. Eighteen of the suites are one bedroom suites, and 16 are two bedroom. The apartment buildings were completed in October of 2012 (the "tax year"), and the supplementary assessment, based on the income approach, reflects the value of the apartment buildings for the months of October, November and December of the tax year.

[3] All suites in the buildings are part of the Government of Alberta's affordable housing program. The Complainant is party to an agreement with Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Municipal Affairs ("the Agreement") by the terms of which the Complainant received a grant in the full amount of \$4,174,582 upon completion of construction. Section 7 of the Agreement states that the subject property shall be used for affordable housing for a period of at least 20 years, or such period as may be agreed to in writing by the Minister and the Complainant. Schedule B of the Agreement requires that monthly rent for the suites be ten percent or more below the average market rent for the term of the Agreement.

Regarding Brevity:

[4] In the interests of brevity, the Board will restrict its comments to those items the Board finds relevant to the matters at hand. Furthermore, the Board's findings and decision reflect the evidence presented and examined by the parties before the Board at the time of the hearings.

Issues:

[5] The Board found the issues to be as follows:

1. Does the fact that rents for apartments in the subject property are, by agreement, ten percent less than average market rents, justify a reduction in the assessment?
2. What weight should be given to the appraisal prepared by Altus Group Limited?
3. Has the subject property been put in the wrong category with respect to the number of dwelling units, i.e., the two "9-19" category instead of the "greater than 30 units" category, and if so, what is the effect on the assessed value?

Complainant's Requested Value for the Supplementary Assessment: \$1,451,188**Summary of the Complainant's Position:**

[6] The Respondent City of Calgary sent the Complainant a 2011 Supplementary Property Assessment Notice dated December 1st, 2011, which stated that, based on a three-month period, the supplementary assessment for the subject property was \$1,792,500. Property tax due for the supplementary assessment was \$10,159.89. Further to the initial complaint filed December 15th, 2011, the Respondent assessed the subject property for the 2012 tax year at \$8,630,000, resulting in a property tax assessment of approximately \$50,198.98. It is these property appraisals and tax assessments that are being contested.

[7] On page 19 of the Respondent's 2012 Property Assessment for Multi-Residential Lowrise Data for roll number 201691128, it states the total number of one BR units to be 18 and the total number of two BR units to be 16, for a total of 34 units. On page 1 of the 2012 Property Assessment – Assessment Range of Key Factors, Components and Variables – 2012 Multi-residential, the 4th key factor is number of units. A chart is provided that breaks down the various size categories multi-residential buildings are divided into. Based on this chart, it is clear that each 17-unit building belongs in the "9-19 units" category, and not the "greater than 30 units" they have currently been assessed under. Although the multiplier rates are not listed in the Respondent's document, it is assumed the multiplier rates for smaller buildings would be lower due to greater operational costs for smaller buildings. The two individual 17 unit buildings would have greater operational costs compared to one 34 unit building.

[8] On page 2 of the 2012 Property Assessment – Assessment Range of Key Factors, Components and Variables – 2012 Multi-residential, the 5th key factor is income potential. It states "Similar properties should have similar rent levels when competing in a typical market." The Respondent City of Calgary's Assessment worksheet, "2011 Information City of Calgary Multi-Residential Detail Report," states the rent used to assess one bedroom units was \$1,000, and \$1,100 for two bedroom units.

[9] Perhaps the Property Tax department was unaware that the subject property does not collect "similar rents" in line with values identified for this neighbourhood. The Complainant has contracted with the Government of Alberta to provide rental accommodation at a minimum discounted rate of 10% against market value for a period of 20 years. The Government of Alberta uses the bi-annual CMHC Calgary Rental Market Report to determine market rent values.

[10] The most recent CMHC Calgary Rental Market Report (Fall 2011) states the Calgary market rent for a one bedroom unit is \$899, and for a two bedroom unit, \$1,084. The 10% discounted value charged by the Complainant for a one bedroom unit is \$809, and \$975 for a two bedroom unit. Clearly, there is a substantial difference between the Respondent's "similar rents" and the actual rental income the Complainant is allowed to collect under the terms of the contract.

[11] Altus Group prepared an appraisal of the subject property in May of 2011. The appraisal determined that the value of the property with the two buildings to be \$5,250,000. Due to the

discrepancy between the Respondent's 2012 assessment of \$8,630,000 and Altus Group's property appraisal \$5,250,000, two proposals are submitted as alternatives to the current method of assessment, as follows:

1. A property appraisal be conducted by a third party appraisal company every other year, the cost to be born by the Complainant. Based on this appraisal, the Respondent will prepare a property tax assessment and bill using its own multiplier factor.
2. A property appraisal be conducted by the Respondent's tax department annually based on actual rents collected by the Respondent. It is preferred to use actual rents vs. the 10% calculated discounted rate against the CMHC Calgary rental market report as the Complainant can potentially collect less income due to offering more that a 10% discount on rental rates to its tenants.

[12] To summarize, the Complainant would like the Respondent to correct its categorization of the two 17 unit buildings, and use the corresponding multiplier rate based on the new categorization. Furthermore, the Complainant requests that the Respondent review the income potential calculation, and base their appraisal of the subject property on a third party appraisal to be conducted every other year, or, in the alternative, to use actual rental income from the subject property to calculate a more accurate appraisal. The savings realized in operating costs are savings that assist in providing the best possible affordable housing for tenants.

Summary of the Respondent's Position:

[13] Property assessments in Alberta are prepared in accordance with the *Municipal Government Act*, R.S.A. 2000, c.M-26, and A.R. 220/2004, the *Matters Relating to Assessment and Taxation Regulation* ("MRAT"). The purpose of property assessment is to assess all comparable property at similar values so that taxation is fairly and uniformly distributed. The assessed value of a property represents:

- an estimate of the value of the fee simple estate in the property taking into account the characteristics of the property as of December 31st of the year prior to the year in which the tax is imposed, and
- what the property may have realized had it been sold as of the valuation date of July 1st of the assessment year by a willing seller to a willing buyer.

[14] The subject property has been assessed based on the income approach. The valuation standard is market value, defined in the legislation as the amount that a property might be expected to realize if sold on the open market by a willing seller to a willing buyer. MRAT states as follows, in section 2:

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

[15] Because s.2(c) of MRAT requires the use of "typical" market conditions for similar

properties, actual, or "contract" rents should not be used in assessment. That implies that in the context of mass appraisal, the only way to demonstrate that a particular property has been assessed using an inappropriate income is by showing that the typical rent for similar properties differs from the rent used in the assessment of that property.

[16] The issues raised by the Complainant are two-fold:

1. The subject property should be assessed as two separate projects so as to fall into the 9 to 19 unit category, and
2. The Gross Income is overstated when compared to its actual income..

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

[17] This complaint is with respect to the supplementary assessment of the subject property in the amount of \$1,792,500. There is no other complaint indicated on the Assessment Review Board Complaint form. For clarification, the supplementary assessment is based on the value of the improvements, i.e., the two apartment buildings, as though they were in place as of the valuation date in the assessment year, i.e., July 1st of 2010. This assessed value was then pro-rated based on the period the improvements were complete in the tax year. The apartments were completed in October of 2011, and the assessment, \$7,170,000, was pro-rated for the months of October, November and December, 2011.

[18] As noted by the Respondent, Section 2 of Alberta Regulation 220/2004, the *Matters Relating to Assessment and Taxation Regulation* ("MRAT"), stipulates four mandatory requirements for assessment of property in Alberta. First, the assessment must be based on market value. Secondly, the assessment must be prepared using mass appraisal. The third requirement is that the assessment be an estimate of the value of the fee simple estate in the property, and the fourth requirement is that the assessment reflect typical market conditions for properties similar to the assessment property.

[19] The *Municipal Government Act* defines market value in Section 1(1)(n) as "the amount that a property, as defined in section 284(1)(r), might be expected to realize if sold on the open market by a willing seller to willing buyer," and "mass appraisal" is defined in Section 1(k) of MRAT as ". . . the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing." "Fee simple estate" has not been defined in the legislation, but at p.7 of *Municipal Government Board Order MGB 137/01* (at p.73 of Exhibit R-1) the fee simple estate is described as encompassing all of the ownership rights in property, including the leasehold rights i.e., the lessee's interest. Following from this, the Municipal Government Board went on to state (at p. 11 of MGB 137/01; p.77 of Exhibit R-1): "That is to say that tenants paying less than market rent are enjoying a positive leasehold interest which must be included in the full fee simple estate for valuation purposes." In other words, if a leasehold interest is a positive value to the tenant, that positive value must be captured in the assessment. Actual rents, sometimes referred to as "contract" rents, are not used in assessment because they cannot be relied upon to reflect the leasehold interest. What is used instead are "typical" rents, in other words, rents that reflect current market conditions. That assessments reflect typical market conditions is the fourth requirement of Section 2 of MRAT.

[20] In the present case, the Complainant obtained an appraisal of the subject property which was included in the Complainant's evidence (C-1). The Board notes that the purpose of the appraisal is stated as ". . . to estimate the market value of the Fee Simple Estate as at the effective date. The intended use of the appraisal is for financing purposes." (appraisal, p.4) Obviously, the appraisal was not prepared for the purpose of an assessment complaint. Furthermore, at p.5, we find this statement: "The valuation contained herein assumes a rental project operating at a stabilized vacancy with *contract rents* (Board's emphasis) based on the terms of the agreement with Alberta Housing and Urban Affairs in place." This means that the appraisal is not based on typical market conditions. The appraisal also contains information in support of the direct comparison approach. Had a representative of Altus Group Limited been present at the hearing, the Board could have questioned the representative with respect to the intent of the appraisal, as well as the comparability of the properties relied on in the direct comparison approach. As it was, there was no opportunity for the Board to question the authors of the appraisal concerning its applicability to the assessment complaint. In the result, the Board gave little weight to the appraisal.

[21] For the reasons stated above, the fact that the Agreement requires rent for the suites in the subject property to be ten percent less than market does not mean that the subject property should be assessed based on its contract rents, instead of typical rents. The Board finds no exception to the valuation standards of the *Municipal Government Act* and regulations. Finally, the Board notes that there is no evidence that the Agreement runs with the land. The Agreement can be terminated, subject to repayment of the grant or a portion of it, and there is nothing in the Agreement that precludes sale of the subject property.

[22] With respect to the issue of the number of dwelling units, i.e., whether the buildings on the subject property should have been included in the Respondent's unit category as two "9-19" unit buildings, rather than in the "greater than 30 units" category, the Complainant failed to explain what effect the change in categorization would have on the assessment, consequently the Board is left with nothing on which to base an adjustment to the assessed value.

Board's Decision:

[23] In the result, the Board found there was insufficient evidence to support an adjustment to the assessment. The assessment is therefore confirmed at \$1,792,500.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF April 2012.



T. Helgeson
Presiding Officer

Exhibits, two identical sets, one for each hearing:

C-1, Complainant's submission

R-1, Respondent's Assessment Brief

R-1, Respondent's Assessment Brief**C-2, Complainant's Rebuttal**

<u>Appeal type</u>	<u>Property type</u>	<u>Property sub-type</u>	<u>Issue</u>	<u>Sub-issue</u>
CARB	Residential	Walk-up Apt.	Income Approach	Net Market Rent/Lease Rates

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.*