

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:

Alberta Health Services
(as represented by AEC Property Tax Solutions), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER
R. Cochrane, BOARD MEMBER
M. E. Bruton, BOARD MEMBER

This is a complaint to the Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER(S):	047043708
LOCATION ADDRESS:	704 – 16 Avenue NE
FILE NUMBER:	73752
ASSESSMENT:	\$ 10,690,000.

This complaint was heard on the 16th day of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 2.

Appeared on behalf of the Complainant:

- N. Laird
- S. Rickard

Appeared on behalf of the Respondent:

- H. Yau
- J. Young

Board's Decision in Respect of Procedural Matters:

The Complainant advised the CARB that his brief relating to the Complaint to be heard by the CARB also pertains to forty-eight (48) additional files all of which are similar properties and all of which share the same issue(s) to be presented herein. The Complainant explained that all of the evidence and argument presented for this Hearing is also applicable to the other forty-eight files hence only one brief will be presented to represent all forty-nine Complaints. Accordingly the Complainant requested that the CARB carry forward all of the evidence and argument to be presented herein and apply same to the ensuing Complaint Hearings. The Respondent also advised the CARB that they had also prepared only one defence brief to deal with all of the properties, accordingly they agreed with the proposal of the Complainant that all of the Complaints be heard as one.

The CARB agreed with this proposal and accordingly the Complaint evidence and argument, from both parties, will be applicable to all of the following files:

72131 (subject) / 72149 / 72155 / 72158 / 72167 / 72171 / 72172 / 72175 / 72179 / 72187 / 72193 / 72229 / 72231 / 72232 / 72235 / 72284 / 72292 / 72301 / 72314 / 72315 / 72316 / 72328 / 72346 / 72347 / 72348 / 73729 / 73732 / 73737 / 73741 / 73743 / 73747 / 73749 / 73751 / **73752** / 73754 / 73756 / 73757 / 73759 / 73760 / 73761 / 73762 / 73763 / 73764 / 73765 / 73766 / 73767 and 73768. (Note: two files #72350 and 72351 were withdrawn at the Hearing by the Complainant)

Board's Decision in Respect of Preliminary Matters:

The respondent advised the CARB that the Rebuttal brief of the Complainant had not been received by the Respondent within the time allowances outlined in the Matters Relating to Assessment Complaints Regulation (MRAC) Section 8(2)(c). The Complainant advised that he was aware that his Rebuttal brief had been submitted one day late.

In accordance with MRAC Section 9(2) the CARB must not hear any evidence that has not been disclosed in accordance with Section 8. Accordingly the CARB will not hear the Rebuttal evidence of the Complainant.

Property Description:

[1] The properties being addressed herein consist of 36 low-rise and 13 hi-rise Seniors Residences with various location throughout the city of Calgary.

Issue(s):

[2] The Complainant introduced two issues (Exhibit C-1 pg. 5) for the CARB's consideration and they are:

A) The assessed Gross Income Multiplier employed by the Assessor in valuing the subject properties is too high and results in values that are not representative of Market Value.

B) The assessed value(s) of the vacant land component do not reflect the discount for seniors residences as having been applied.

The second issue B) above pertains to two properties only and both of these have been withdrawn by the Complainant. Accordingly the CARB will deal with one issue A) above, only.

Current Assessment:

[3] \$ 10,690,000.

Complainant's Requested Value:

[4] \$ 8,980,000. (truncated)

Board's Decision:

[5] The assessment is **confirmed** at:

\$ 10,690,000.

Position of the Parties**Complainant's Position:**

[6] The Complainant explained to the CARB that in assessing the subject properties, the Assessor applies an 18% discount to the market based *Gross Income Multiplier* (GIM) applied to the estimated *Effective Gross Income* (EGI) of each property. The Complainant acknowledges that the assessments under complaint have in fact been subjected to the aforementioned 18% discount; however, the Complainant's issue deals with the GIM established by the Assessor prior to application of any discount. The Complainant submitted (Exhibit C-1 pgs. 9 & 10) a summary of the assessed values for all forty-seven (47) properties under complaint, segregated into the high-rise category (13 properties) and low-rise category (34 properties) which, among other things, provides the *unadjusted* GIM utilized by the Assessor and the adjusted GIM as well as the requested *unadjusted* GIM and the adjusted requested GIM. The *unadjusted* GIMs employed by the Assessor in the high-rise category are 12.5, 13 (one property only), and 13.25. The *unadjusted* GIMs employed by the Assessor in the low-rise category are 11.5 (one property only), 13 or 15.75 (four properties only). The Complainant requests an *unadjusted* GIM of 10.5 for the high-rise category of properties and 11.5 or 14 (three properties only) for the low-rise category of properties

[7] In support of their requested *unadjusted* GIMs the Complainant introduced (Exhibit C-1 pgs. 87 & 88) a summary of 54 sales (9 high-rise & 45 low-rise) recorded between July 9, 2009 and June 29, 2012 for which the Complainant has estimated the EGI and determined the

resulting GIM (unadjusted) from the indicated selling price. The indicated Mean GIM (unadjusted) for the high-rise category is 10.06 and the Median is 10.10 while the indicated Mean GIM (unadjusted) for the low-rise category is 10.39 and the Median is 10.31 (Exhibit C-1 pg. 88). The Complainant then went on to explain how the rents utilized to establish the gross income for each of the sale properties was determined. The rental data was extracted from web based offers to rent (Exhibit C-1 pgs. 168 – 309).

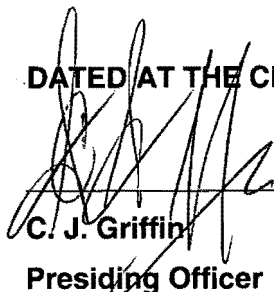
Respondent's Position:

[8] At this point in the Hearing the Respondent brought forward a motion that the Complainant had not met the requirements of their *Burden of Proof*, specifically their initial onus and requested the CARB to make a decision pertaining to same as this would determine if the Respondent need submit his brief to defend the assessments. The Respondent also pointed out to the CARB that they had forewarned the Complainant in advance of the Hearing that they would be making such a motion.

Board's Decision on the Burden of Proof:

[9] The *Burden of Proof* refers to a party's duty to prove a disputed assertion or charge. The *Burden of Proof* includes both the *Burden of Persuasion* and the *Burden of Production* (*Black's Law Dictionary*). The *Burden of Persuasion* refers to a party's duty to convince the fact-finder to view the facts in a way that favors (sic) that party. The *Burden of Production* refers to a party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling (*Ibid*). In consideration of the foregoing the CARB assessed the evidence put forward by the Complainant and determined that 1) no time adjustments had been applied by the Complainant to any of the sales utilized for the purposes of deriving a GIM even though some of these sales date back to 2009 and 2) the Complainant employed 2013 dated offers to rent, not actual rent rolls, or similar, to estimate the gross income for those same sales and 3) the Complainant provided no basis to support the vacancy rates they applied to those gross income estimates to derive the EGIs. Based upon these facts the CARB agrees with the Respondent that the Complainant has failed in their duty to meet their initial onus by failing to provide sufficient evidence to convince the CARB that a reasonable Complaint had been put forward. Accordingly the assessments for the subject property, is **confirmed**.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF October 2013.


C. J. Griffin
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure

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

Municipality: Calgary Decision No. 73752/P-2013 Roll No: **047043708**

<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
Seniors Residences	Hi-Rise & Low-Rise	M.V.	GIM