

**ROCKY VIEW COUNTY
COMPOSITE 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:

***Costco Wholesale Canada Ltd. (as represented by Altus Group Limited),
RESPONDENT IN THIS PRELIMINARY MATTER***

and

Rocky View County, (APPLICANT IN THIS PRELIMINARY MATTER)

before:

W. Kipp, PRESIDING OFFICER

This is a complaint to the Rocky View County Assessment Review Board in respect of a property assessment prepared by the Assessor of Rocky View County and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER:	06409003
LOCATION ADDRESS:	300, 261200 Crossiron Blvd., Rocky View AB
LEGAL DESCRIPTION:	Plan 0912138, Block 4, Lot 1
ASSESSED VALUE:	\$18,594,600

This preliminary matter to the complaint was heard on the 18th day of July, 2013 at the office of Rocky View County located at 911 – 32 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Applicant:

- *John Myers - Assessor*

Appeared on behalf of the Respondent:

- *Andrew Izard & Kerry Reimer (Altus Group)*

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

- [1] The parties had no objection to the Board being comprised of a single member (Matters Relating to Assessment Complaints Regulation (MRAC) section 36(1)(2).
- [2] On June 11, 2013, Rocky View County, the Applicant, made application to the Board to declare the property assessment complaint against the 2013 assessment of the Costco property invalid pursuant the provisions of section 295 (4) of the Municipal Government Act (MGA).
- [3] The grounds for the application were that the Respondent, Costco Wholesale Canada Ltd. had failed to provide the information requested by the County pursuant to MGA section 295 (1).

POSITIONS OF THE PARTIES:

Applicant's Position:

- [4] On September 17, 2012, the assessor for Rocky View County mailed a "Request for Information" (RFI) to the Respondent asking for information about the Costco Crossiron Mills property to assist in the preparation of the 2013 assessment.
- [5] On October 10, 2013, the Respondent's reply was received by the County. That reply failed to provide the information that had been requested.
- [6] On February 19, 2013, the 2013 Property Assessment Notice was mailed from the Applicant to the Respondent.
- [7] On April 19, 2013, an Assessment Review Board Complaint form was received by the Applicant from Altus Group Limited, authorized agent for the Respondent.
- [8] Similar RFI's had been mailed to the Respondent in 2010 and 2011 and there had been no response to either.
- [9] The September 2012 RFI comprised several pages. It explained that the requested information was to assist the assessor in determining how the subject property would be assessed. Information was requested in regard to the costs and development of land, construction costs of improvements, income and expense data and additions and/or deletions to assessable machinery and equipment.
- [10] It was important to acquire income and expense information for the property because for the 2012 assessment complaint, the Complainant planned to argue for the property to be assessed using an income approach. Other owner-occupied property owners in the County have provided operating statements for their properties even though there are no tenants.
- [11] If the 2013 merit hearing proceeds, the Complainant is likely to make land value and improvements costs an issue. It would be unfair to raise these matters since the actual cost information had not been provided in response to the RFI.
- [12] The response to the September 2012 RFI was a letter dated October 3, 2012 and signed by Einar Z. Werschitz, stating that further information could be attained by telephoning Mr. Werschitz at his Ottawa office. Attached to the letter was a copy of one page from the RFI with the handwritten notation "100% Owner Occupied."
- [13] On October 18, 2012, John Myers, Assessor telephoned Mr. Werschitz at the telephone number that had been provided and receiving no answer, left a message. The call was not returned.
- [14] In support of its position, the Applicant provided copies of CARB Decision No. 0269-2/2012 (Rocky View County – Costco Wholesale Canada Ltd.), Board Order #0238/02/2011-J (The Town of Okotoks – Costco Wholesale Canada Ltd.) and Board Order #0238/08/2012-

- J (The Town of Okotoks – Costco Wholesale Canada Ltd.). Each of those orders dismissed Costco complaints pursuant to MGA section 295 (4).
- [15] During questioning, the Applicant acknowledged:
- [16] The subject property has been assessed annually since 2010 by use of a cost approach wherein improvements costs have been estimated by use of a costing manual.
- [17] Golf courses within the County are assessed on the basis of actual income and expense data. Other non-residential properties are assessed on the basis of cost.
- [18] The subject Costco property includes a gas bar component and no specific information had been requested for that component until February 2013.
- [19] The RFI that was sent to Costco in September 2012 was a “generic” form, not tailored specifically to the Costco property.
- [20] No attempt was made to contact Mr. Werschitz via the email address he had provided. No telephone calls were made after the October 18, 2012 call.
- [21] On February 11, 2013, after the 2013 assessment had been entered on the roll, the Applicant met with an agent from Altus (Mr. Izard). Following this meeting, a subsequent request was made (February 12) for “*the actual building and site development costs incurred in constructing the warehouse and gas bar facility. . .*” No other specific information was requested. The Applicant stated, while being questioned by the Respondent, that a further subsequent request had been made for income and expense information (Board note: there was nothing in the evidence disclosure documents in that regard and there was no further mention of this request during the hearing). Detailed cost information was provided through Altus in early April 2013.
- [22] As a result of the non-compliance or insufficient response to the Applicant’s RFI, the complaint against the 2013 assessment of the Costco property should be dismissed.

Respondent’s Position:

- [23] The Respondent argued that the complaint should not be dismissed because there had been a timely response to the September 2012 RFI.
- [24] The request was not clear; despite the lack of clarity, the taxpayer responded in a reasonable fashion prior to the deadline for response; the information was not necessary to prepare the assessment; full cost information was provided once the Applicant clearly described what was being requested; fairness dictates that the taxpayer should not lose the right of appeal in the circumstances.
- [25] MGA section 295 (1) states that a person must provide any **information necessary** for the assessor to prepare an assessment. Since three years of assessments had already been prepared on the property without the requested information, the information was not necessary.
- [26] The Respondent cited “*Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220” wherein the Alberta Court of Appeal made several findings, including:
- [27] The assessor owed the taxpayer a duty of fairness which included contacting the taxpayer if the information was not sufficient;
- [28] The standard for the response was substantial compliance, which applies to all taxpayers regardless of sophistication;
- [29] Allowing irrevocable unilateral assessments . . . is the largest possible penalty in a taxation statute
- [30] The law does not compel the taxpayer to do the impossible.
- [31] In Boardwalk, the taxpayer had not responded at all. In this case, Costco did respond to the RFI and then provided additional information once the request was clarified. There was no indication from the County that the October 3, 2012 response was not sufficient. The

- Applicant breached its duty of fairness in choosing not to contact the taxpayer until right before the assessment notices were mailed and bringing this application despite having received a fulsome response.
- [32] The RFI was not specific to the subject property or to any specific property type. A lot of extraneous and inapplicable information was being requested in the generic RFI which forced the taxpayer to guess what information the assessor was looking for. There had been no new development on the property and the property is owner occupied so the brief response was, in the taxpayer's opinion, the information that was necessary. The taxpayer responded with the only information that it thought could be relevant in preparation of the assessment. In the taxpayer's view, construction costs were not relevant to the current assessment since the improvements had been completed long before the physical condition date of December 31, 2012.
- [33] In an email to Altus, Mr. Werschitz stated that he has no knowledge or record of the telephone call from Mr. Myers on October 18, 2012.
- [34] In Boardwalk, the Court interpreted necessary to mean "indispensable" not merely "expedient" or "convenient." The assessment was prepared without the requested information. The Respondent submits this does not meet the "indispensable" test.
- [35] The Applicant's second request for information on February 12, 2013 stated that it was "another request." It did not state that the taxpayer was in breach of its obligations under MGA section 295 in its October 3, 2012. The taxpayer was given 60 days to respond which deadline was well after the date the assessment notices were mailed. The response to this second request was provided within the 60 day response period. The taxpayer's actions on April 3, 2013 demonstrate that all it took for the Applicant to obtain the information sought was to clarify the request.
- [36] The Respondent submits that to allow the Applicant to be successful in its application would be to condone the breach of the duty of fairness owed to the taxpayer by the Applicant.
- [37] The Respondent maintains that if the Board allows the merit hearing to proceed, the Applicant will not be disadvantaged. Section 9 of the Matters Relating to Assessment Complaints Regulation (MRAC) states at subsection (3) "*A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.*"

Reasons for the Decision:

- [38] The Board denies the application for dismissal of the complaint. The merit hearing pursuant to the filed complaint will proceed as scheduled.
- [39] The Board has no jurisdiction to decide on matters relating to alleged breaches of the regulations in years prior to this 2013 tax year.
- [40] A number of unfortunate events occurred but neither the Applicant nor the Respondent can be singled out as being solely responsible for the events that lead up to this preliminary hearing. Efforts should have been made by both parties to ensure that the 2013 assessment was conducted using the best available data and information pertaining to the subject property. The Applicant could have sent a site specific RFI stating precisely what information was being sought and the reason for the request. The Respondent should have contacted the Applicant if there were questions regarding what was being requested in the RFI. The Applicant should have officially informed the Respondent that the October 3, 2012 RFI response fell short of expectations. Both parties should have contacted one another sooner rather than later.
- [41] The September 17, 2012 RFI was generic and it had applicability to many property types.

For example, the last page of the letter concerns machinery and equipment (M&E). M&E is defined in the regulations and its assessment is regulated and must be done in accordance with the MGA and its regulations. Both parties to this hearing displayed a misunderstanding of M&E assessment by their discussions of such things as gas bar tanks and equipment and freezers and coolers in the warehouse store. These items are not M&E as defined in the regulations. There is no assessable M&E on the subject property. If the assessment "experts" do not have a clear understanding of this facet of assessment, how could the representative of a taxpayer know how to treat the lengthy M&E section in the RFI?

- [42] The Board finds that the majority of the information being requested in the RFI was not "**necessary** for the assessor to prepare an assessment." (emphasis added). The Applicant acknowledged that most non-residential properties in the County are assessed by use of a cost approach. That being the case, information regarding income and expenses is not **necessary** for the preparation of the assessment. The M&E matter has already been discussed in this order.
- [43] There was contact between the parties, albeit with long periods of time between each contact. Once there was clarity to the specific information that had been requested in the original, generic RFI, the Respondent did comply by providing cost information. As far as could be determined at the hearing, the cost information provided was sufficient even though the assessor has yet to make use of that information (perhaps for the 2014 assessment).
- [44] The cases cited by the Applicant were in regard to situations where there had been no response to an RFI. In this instance, there had been a response to the first RFI, brief as it was.
- [45] Strict interpretation and application of section 295(4) is a severe penalty against a taxpayer. The taxpayer should be afforded the opportunity to fully understand an information request. It is not always possible to answer a question on the first attempt. Clarification of the question is sometimes necessary and the parties owe it to each other to ensure understanding of both the question and the response to the question.
- [46] The Boardwalk decision of the Alberta Court of Appeal was given significant weight by the Board. There was a response from the taxpayer to the original RFI. In time, a full response to specific questions was provided. The taxpayer should not be penalized under these circumstances.

DATED AT THE CITY OF CALGARY THIS 1st DAY OF August 2013.



N. Housenga, Rocky View County Municipal Clerk for:
W. Kipp
Presiding Officer

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

NO.	ITEM
Applicant Exhibit 1	Applicant Disclosure
Respondent Exhibit 1	Respondent 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.*