

BOARD ORDER File #2012-01

IN THE MATTER OF A COMPLAINT filed with the Beaver County Inter-municipal Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Axar Ami Corporation - Complainant

- a n d -

Town of Viking - Respondent, represented by Gary Barber, assessor.

BEFORE:

Members:

D Trueman, Presiding Officer

H Armitage, Public Member

G Hrabec, Public Member

A hearing was held on November 20, 2012 in the Community Center, Ryley, Alberta. Beaver County, administrative staff, Margaret Jones was present to assist with management of the official documents record and electronic recording equipment. The hearing was for the purpose of considering complaints about the assessment of the following property:

Roll number: 30006063

Civic address: 5120 50th Street, Viking, Alberta

2012 assessment: \$201,450

PART A: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make procedural decisions under Part 11 of the Act. At the time the parties were introducing themselves, the CARB learned that Dave Patel was appearing on behalf of Sanjay Patel, who had signed the complaint on behalf of the complainant Axar Ami Corporation. Mr. Patel was asked for something that would document his authority to act on behalf of the complainant. The CARB was presented with an email dated November 19, 2012. The respondent advised the panel that he had no objections to Dave Patel appearing in the capacity of representative of the complainant Corporation. The panel recessed briefly to consider the evidence regarding representation on behalf of a complainant. *Matters Relating to Assessment Complaints regulation (MRAC), Division 3 Pars 6, Para 51, an agent may not file*

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a complaint or act for the assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaints agent authorization form set out in schedule 4. Para 16 (1) parties to a hearing before an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk of the assessment review board.

The CARB examined the email letter and decided that the letter was essentially a re-presentation of the complainant's original disclosure presentation. It was thus decided that the complaint would be considered to the extent of examination of the complainant's written testimony and evidence, however Dave Patel would not be allowed to provide testimony or otherwise comment. At the reopening of the hearing Dave Patel was advised that he would be welcome to observe, however unable to provide oral testimony or answer questions. Mr. Patel advised that he would not be attending the hearing and promptly left the room. The hearing then proceeded with the testimony of the respondent.

PART B: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The property under complaint is described for assessment purposes as a store demonstrating an effective year built of 1999 and containing 2800 ft.² on a land base of 2.64 acres. The building houses a restaurant known as Subway Restaurant. Although located within the corporate limits of Viking, the property is not serviced with municipal water or sewer. The services are however a private well and septic system.

PART C: ISSUES

The Complainant specifically itemized number 3 on his complaint form, which is *assessment amount*. He said that in his opinion the assessment of the subject property should be **\$149,000**. The issue to be decided was whether or not the respondent's comparable sales supported his mandated mass appraisal, assessment amount.

PART D: COMPLAINANT POSITION

The complainant provided an undated letter of written testimony, a letter dated August 27, an email from the Battle River Credit Union dated August 20 and an email letter of November 19. The essence of these documents is that the subject property is unserviced with municipal water and sewer and in the opinion of the complainant, taxes are collected to provide these services. In addition a request for street lighting had gone unnoticed by the Town of Viking. Mr. Patel wrote that he would be unable to sell the property for the assessed amount and information from his mortgage company provided support for his mortgage costs.

PART E: RESPONDENT POSITION

The respondent provided evidence, at page 4 of his submission, that his assessment had remained relatively consistent over the past 3 years and that for 2009 it was \$201,130, for 2010 at \$199,420 and for the current 2011 assessment, it is \$201,450. He provided evidence that the improvements were assessed at \$188,040 and the land was assessed at \$13,410. The assessor testified that this land assessment amount contemplated a value for unserviced land. He said that he would be justified in adding approximately \$40,000 to this land value in order to capture the assessed value of private services which had been installed and which were namely water and septic. The assessor provided a copy of a March 2007 Transfer of Land for the subject property, to the complainant, for \$200,000. He particularly pointed to Affidavit Re Value of Land wherein the complainant had sworn that "the current value of the land is in my opinion \$200,000; 'value' means the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer".

The respondent presented sales of 6 properties which he said were comparable to the subject and therefore provided an adequate measure of support for his assessment. These sales occurred through the period 1993 to 2011 and ranged in values from \$31.21 per square foot to \$63.64 per square foot. He also presented current year assessments for 4 properties which he said were similar and which he said proved that the subject assessment at \$71.95 a square foot was fair and reasonable. The 4 comparable assessments were at \$88.05 a square foot, \$67.85 a square foot, \$95.61 a square foot and \$103.44 a square foot

PART F: DECISION

The complaint is denied and the assessment is confirmed at **\$201,450**.

It is so ordered.

PART F: REASONS

The CARB prefers the evidence of the respondent. Applicable legislation which provides direction is as follows: *Municipal Government Act 289(1) assessments for all property in the municipality, other than linear property, must be prepared by the assessor appointed by the municipality. (2) each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which the taxes are imposed under part 10 in respect of the property and (b) the valuation and other standards set out in the regulations for that property. Alberta Regulation 220/2004 Part 1, Standards of Assessment, Valuation standard for a parcel of land 4 (1) the valuation standard for parcel of land (a) market value. MGA1 (1) In this Act, (n) "market value" means the amount that a property as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.*

Sales evidence suggested that the complainant had purchased the subject property in 2007 for \$200,000. Given the relatively recent transaction date and the July 1 valuation date, the

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assessment of \$201,450 is a more believable expression of market value than the complainant's requested \$149,000. While business conditions for the assessed person may have been strained, the CARB is nevertheless guided by the *Alberta Regulation 220/2004 Part 1, Standards of Assessment Para 2, an assessment of property based on market value (b) must be an estimate of the value of the fee simple estate in the property.* Therefore, business considerations are not persuasive of real property values.

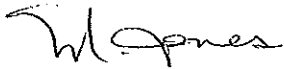
The panel noted that the comparable sales were in some cases both dated and of older properties. However, recent sales in 2008 and 2011 respectively yielded values of \$63.64 a square foot and \$58.96 a square foot. Given that this approximate average is \$60 and the approximate area of the subject is 3000 ft.², then an approximate value of \$180,000 for the improvements plus land value provides reasonable support for the assessment and not for the requested assessment.

It is generally accepted that the responsibility of onus lies with the complainant. In other words, it is the complainant's responsibility to establish that the assessment does not meet with the requirements of the *Municipal Government Act (MGA)* and its Regulations. In this case it was decided that the complainant had failed to meet this obligation by not providing examples of similar property sales that were persuasive to the Board; or alternatively, other accepted valuation techniques or property appraisals that would have supported his claim.

Finally, *MGA section 460 (1) a person wishing to make a complaint about any assessment or tax must do so in accordance with this section (6) there is no right to make a complaint about any tax rate.*

The CARB notes that the *MGA section 467(3) an assessment review board must not alter any assessment that is fair and equitable taking into consideration (a) the valuation and other standards set out in the regulations.*

Dated at the Village of Ryley in the Province of Alberta, this 10th day of December 2012.



(fa) _____
Presiding Officer, Darryl Trueman

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APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
1. Exhibit	complainant written testimony
2. Exhibit	respondent evidence

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Restaurant	Valuation	