



Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 001-2012

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo 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:

Regional Municipality of Wood Buffalo (RMWB) Represented by Reynolds Mirth Richards and Farmer LLP, Respondent – Complainant

- and -

Colliers International Realty Advisors Inc, - Represented by Wilson Laycraft LLP - Respondent

BEFORE:

Member:
J. Gilmour, Presiding Officer

Board Administration:
N. MacDonald, Assessment Review Board Clerk

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing had been held June 29, 2011 in Fort McMurray in the Province of Alberta to consider complaints about the assessment of the following properties located in Fort McMurray:

10025 Gordon Street
4 Haineault Street

A decision of the board in relation to the merits of a hearing was issued on July 19, 2011. As part of that decision, the CARB requested the parties provide further submissions on the issue of costs.

PART B: ISSUES

- a) Can a single CARB panel member award costs pursuant to Schedule 3 of the Matters Relating to Assessment Complaints Regulation (MRAC) AR 310/2009?
- b) If the answer to question (2) is affirmative, should costs be awarded by the CARB?

- c) If costs should be awarded by the CARB, what amount of costs should be awarded, having regard to Schedule 3?

Position of the Parties:

The Complainant Municipality submitted that a one member CARB cannot award costs. Although section 453(1)(c) of the Act includes a one member composite board, the definition is subject to section 454.1(2). This provides for a single member CARB subject to the conditions prescribed in MRAC. The powers given to a single member CARB are set out in section 36(2) of MRAC. This section does not mention costs. Without a specific delegation of the ability to award costs under section 36(2), a single member CARB does not have the authority to award costs. The Complainant Municipality submitted that the terms “procedural” and “administrative” do not include costs.

The Complainant Municipality further submitted that it was not an appropriate circumstance to award costs. There was no abuse of the complaint process by requesting a determination of the proper forum for the complaint. This is the second year in which the new regime has been operating and the Complainant Municipality believes that an opportunity to re-visit the decision made the year prior provides for an opportunity for a sober second thought from an impartial and independent decision maker, militating against the possibility of human error and enhancing procedural fairness of the Board’s decision making processes. The Municipality’s failure to seek judicial scrutiny of this previous year’s decision can be explained by virtue of the fact that the decision was one of mixed fact and law and would thereby not qualify for review by the Court. Previous decisions of Composite boards do not bind successor boards. There has been only one year for which the decisions can be analyzed, thereby permitting further review. There is some case law (specifically *City of Calgary v. Loughheed & Co.*, 2011 ABQB 371) suggesting that the 2010 decision of the Composite board may have been in error and the rules under MRAC could reasonably be interpreted to arrive at a finding that the appeal should be allowed before a LARB.

On the issue of quantum, the Complainant Municipality submitted that the matter was a procedural application and therefore to be governed under Part 3 of Schedule 3. Counsel noted the power to award costs is discretionary, as evidenced by the word “may”. Given the newness of the legislative scheme, the Complainant Municipality submitted costs should not be awarded at the maximum amount, if they are awarded.

Position of the Respondent:

[2] Counsel for the Respondent submitted that section 51 of MRAC provides for the jurisdiction to award costs. Pursuant to section 36, a single member composite board is a composite assessment review board and is thereby empowered to award costs pursuant to section 36(2) (b) and (c).

[3] Moreover, the Schedule 3 Table of Costs clearly provides that a single member CARB may award costs, as it explicitly references applications made before a one member board. Under Part 3, the express words are “contested hearings before a one member board”.

[4] The preamble to the Table of Costs references the ability of a composite board to award costs. The Respondent submits that the wording contained within both the wording of the regulation (MRAC), as well as in the table clearly indicates that a single member composite board has the jurisdiction to award costs and argues that it is an appropriate case for the award of costs.

[5] The Respondent argues that costs should be awarded for the following reasons. There had been no changes to facts or circumstances in the year prior in regard to the application to have the matters heard by the LARB. Requiring the Respondent to prepare for and attend a hearing in such circumstances caused an unnecessary preliminary hearing to occur which was a repeat of previous submissions. In addition, Section 52(2) of MRAC provides that a CARB may consider whether a party incurred additional or unnecessary expenses as a result of an abuse of the complaint process. The Respondent submitted it was an unnecessary hearing and therefore justified the award of costs.

[6] The Respondent submitted that the appropriate amount of costs was \$1,750.00 having regard for the columns of the Table in Schedule 3. The costs would help defray solicitor/client costs incurred as a result of a hearing that had no prospect of success but for which professional fees were required. The Respondent submitted that the costs should go either to the assessed person or the agent for the assessed person in accordance with Schedule 3.

Decision:

The CARB has determined that no costs are to be payable.

Reasons for Decision:

[7] The CARB has reviewed the provisions of the Act and the provisions of Section 36, 52 and Schedule 3 of MRAC. Although the CARB has considered the arguments made by the Complainant Municipality in relation to the jurisdiction of a single member CARB to award costs, the CARB has reviewed the provisions of MRAC noting that a single member CARB is a CARB under the Regulation. Moreover, Schedule 3, Part 3 expressly recognizes that contested hearings may be made a one member board and expressly sets out the suggested costs schedule in such a circumstance. In light of the legislative intention captured by the express wording in Schedule C, the CARB finds that a single panel CARB has the discretion to award costs if it makes a determination that a hearing was required to determine a matter that did not have a reasonable chance of success. However, the CARB notes that the award of costs is discretionary and is, as set out in the preamble to Schedule 3 Table of Costs, to be up to the amounts set out.

[8] The CARB believes this is not an appropriate circumstance upon which costs are to be awarded. The CARB takes note of the fact that the determination of these matters is still under consideration. The CARB further notes that matters such as the one in question has not had the benefit of a great deal of consideration. Due to the non-precedential effect of previous CARB

decisions, it is possible for a party to request that a matter be reconsidered in the infancy of the interpretation of a new legislative scheme. However, the CARB does note that repeated applications of the same nature in the absence of a change of facts or circumstances may cause a different CARB to come to a conclusion different than the one that this CARB has reached.

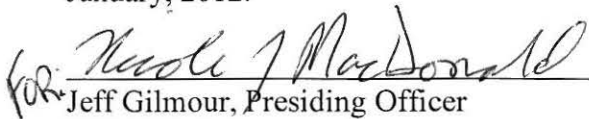
[9] In light of the fact that the CARB has made a determination that this is not an appropriate circumstance for the award of costs, question 3 will remain unanswered.

DECISION

The CARB awards no costs from the hearing leading to the decision CARB 003-2011-P.

It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 31st day of January, 2012.


for Jeff Gilmour, Presiding Officer

APPENDIX “A”

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
1	Respondent’s Argument Application for Costs, dated August 25, 2011 (filed by Reynolds Mirth Richards and Farmer LLP for the Regional Municipality of Wood Buffalo)
2	Letter dated August 25, 2011 from Wilson Laycraft, Counsel for Colliers International Realty Advisors Inc.