TOWN OF HINTON
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-26.1, Section 460, Revised Statutes of Alberta (the Act).

between:

546151 Alberta Ltd., COMPLAINANT
Represented by Salem Cherkaoui

and

The Town of Hinton, RESPONDENT
Represented by Warren Powers, AMAA

before:

J. Noonan***, PRESIDING OFFICER***
J. Couture***, MEMBER***
R. Krewusik***, MEMBER***

This is a complaint to the Hinton Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of The Town of Hinton and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	80832400
LOCATION ADDRESS:	157 Pembina Avenue, Town of Hinton
LEGAL DESCRIPTION:	Plan:9920740; Block 2; Lot12
ASSESSMENT:	$926,000

This complaint was heard on the 12th day of October, 2012 at the Town of Hinton Council Chambers located on the 2nd Floor, 131 Civic Centre Road, Hinton, Alberta.

Appeared on behalf of the Complainant:

- Mr. Salem Cherkaoui

Appeared on behalf of the Respondent:

- Mr. Warren Powers, AMAA

Preliminary Matters:

The Respondent raised two preliminary matters regarding the Complainant's compliance, or non-compliance with the legislation:

1. Had the right to make a complaint been lost for failure to supply information requested by the assessor?

2. Had the Complainant disclosed evidence in the timeframe required by the regulation?

Preliminary Matter # 1:

Municipal Government Act (MGA)

295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.

(4) No person may make a complaint in the year following the assessment year under section 460, or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request.

The assessor mailed the annual Request for Information (RFI) September 29, 2011 to the same address as the previous year, the same address to which the combined assessment / tax notice was mailed. While the previous year's RFI had been completed and returned, the current RFI was received with the Complainant's late disclosure of evidence on Sept. 13, 2012. While the Respondent understood the Complainant's address had changed in 2012, this would not have affected mail sent in September, 2011. In a phone conversation with the Complainant in July, 2012, receipt of the RFI was acknowledged. The Respondent requested the Composite Assessment Review Board (Board) to dismiss the complaint due to non-compliance with *MGA* s 295(1).

The Complainant acknowledged receipt of the RFI in October 2011 and advised the Board it was completed and returned November 5, 2011. The Complainant stressed he understood it was in his best interest to complete the RFI.

Board Finding:

In dealing with *MGA* s 295 applications, the Board is instructed by a body of Court decisions that have set a number of tests that must be considered before a taxpayer loses the right to make an assessment complaint:

1. Was the request for information made pursuant to section 295(1)?

2. Was the assessed party given proper notice of the request?

3. Was the request clear and did it identify the consequences of non-compliance?

4. Was the information requested necessary to prepare the assessment?

5. Did the assessed person comply with the request?

In addition, these guidelines have been further refined to include whether the request was reasonable having regard for all of the circumstances, such as past practice, information available to the owner and information already available to the assessor.

An examination of the RFI letter shows that tests 1-3 have been met. Test number 4 cannot be unequivocally said to be met. The Respondent advised that the information from the prior year's RFI was still relevant, and had been utilized. The Board sympathizes with the assessor's struggle to collect current information and urges all assessed persons to comply with the RFI process. The Board gives the Complainant the benefit of the doubt in regard to test number 5. The Complainant has a history of prior compliance and the oral evidence that the RFI was mailed November 5, 2012 is accepted. The hearing proceeded to consider the second preliminary matter.

Preliminary Matter #2:

Matters Relating to Assessment Complaints (MRAC) Alberta Regulation 310/2009

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing,…

The Respondent provided a copy of the notice of hearing sent to the Complainant

July 10, 2012. The notice specified the time and place of the hearing and an explanation of what evidence must be disclosed. The deadline for submission of the Complainant's documents was identified as August 31, 2012, the Respondent's disclosure due Sept. 28, and the Complainant's rebuttal due Oct. 5, 2012. The complaint form had been filed on time, but no evidence was received by the Aug. 31 deadline. A phone conversation shortly after that date revealed the Complainant had the impression evidence disclosure was due 7 days before the hearing. Disclosure was received and a delivery slip signed Sept. 12, 2012 and passed on to the assessor Sept. 13. The Respondent argued that the late disclosure disadvantaged the ability of the assessor to defend the assessment by 12 days, that this contravened the process outlined in the *Regulation*, and to accept the late disclosure would create an inequity versus those who had also missed the deadline and had their evidence disqualified. The Respondent asked the Board to continue the hearing but to exclude the Complainant's late evidence disclosure.

The Complainant advised that his address had changed in early 2012, and that the Town of Hinton had been so informed. While the address change had been effective for utility billing purposes, the Complainant had assumed the address change would have been passed along to the assessment and taxation department. Apparently, this did not happen. With the passage of the spring and early summer, and no sign of the expected assessment/taxation notice, the Complainant contacted the Town and was able to get a duplicate notice. This was received in early July. [Board Note: The Clerk of the ARB advised the Board that assessment / tax notices were mailed May 7, 2012.] The complaint form was filed on time, but the late receipt of the assessment notice impacted the ability to gather information and address issues in a timely fashion. The evidence had been sent Sept. 10 by Purolator courier, and the Complainant urged the Board to consider the evidence.

Board Finding:

The *MRAC* regulation guides the complaint process and allows discretion in some areas. However, the evidence disclosure timelines are specific and use the imperative "must", allowing the parties no leeway in meeting the deadlines except for instances where the other party gives written consent. The Board has no choice but to exclude the Complainant's written evidence disclosure. The rebuttal evidence was received in time, and the Board ruled this could be addressed insofar as the material rebutted the Respondent's evidence. The hearing continued.

Property Description:

The subject is located at 157 Pembina Avenue, at the corner of Switzer Drive in the Hill District, Hinton. It is a commercial/retail property of 23,216 sq.ft. improved with a 15,790 sq.ft. single-storey building. The building has 11,400 sq.ft. of retail area and 4,390 sq.ft. of warehouse area. The 2012 assessment was prepared by the income approach.

Issue:

Should the assessment be reduced to reflect its vacant status?

Respondent's Position:

The Respondent explained the derivation of the assessment by the income approach. The warehouse portion of the property was considered in average condition and attributed a market rent rate of $7 per sq.ft. from a reported market range of $6-$10 per sq.ft. The retail area, considered fair condition, was attributed a rental rate of $6 per sq.ft. from a market rent range of $5-$7 per sq.ft. A typical 5% vacancy allowance was applied as well as standard expense and non-recoverable allowances, and the resulting typical net operating income capitalized at 9.25%. The value estimate from the income approach was $926,454 rounded down to the assessed amount of $926,000.

The previous year's RFI showed the actual rent was $9.50 per sq.ft. for the entire building. While it was understood the building was vacant as of January 2012, it was oiccupied as of valuation date, July 1, 2012 and should be treated no differently than any other property. The 5% vacancy rate was standard for the municipality and recognized that some vacancy was typical and to be expected over the life of a property. The Respondent advised the assessment was both fair and equitable, and asked the Board to confirm it. In questions, the Respondent advised it was not unusual for average quality warehouse space to have a higher rental rate than fair quality retail space, especially in a market like Hinton where there was good demand for warehouse space from the industrial sector. The Respondent also answered that a chronic vacancy allowance was not recognized until a property had been vacant 3 years.

Complainant's Rebuttal:

The Complainant expressed the belief that the assessment overvalued the subject property. The property had been leased since June 2006 and the net rent received was $8.76 per sq.ft. after a tenant/owner split of the property taxes. From July 1, 2011 through January 2012 the tenant paid utilities but no rent as agreed in the 5 year lease. The tenant vacated the property, and the Complainant was now faced with a difficult rental market. A 16,000 sq.ft. property was different than attempting to rent out small bays, and it was noted that the former IGA grocery store had been vacant since 2006. The owner of that property had tried to sell and lease, and would take a $5 per sq.ft. rent, as would the Complainant for the subject property. The assessor had simply overestimated the revenue potential of the subject. The Complainant wasn't asking that a $2 rent rate be applied in the assessment, but was asking for a $5 rate.

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

The Board heard the subject property is well located, about a block south of Highway 16. As of valuation date, July 1, 2011 and condition/characteristics date of December 31, 2011 the property was occupied but the tenant only paying utilities as agreed in a 5 year lease commencing in 2006.

The Board agrees with the Respondent that an assessment must reflect typical market conditions. The rent rates attributed to the different parts of the building appear very reasonable in comparison to the range of rates in the local market, as do the allowances including vacancy. The Board notes the Respondent's policy of not applying a chronic

vacancy allowance before three years of demonstrated vacancy. The Board observes that this is a policy, not legislation. The Complainant's arguments might, or might not, fall upon more receptive ears should complaints be filed for the 2012 assessment and beyond, but a reduction to the property assessment value of July, 2011 is premature.

Board Decisions on the Issues:

The Board confirms the assessment of $926,000.

DATED AT THE TOWN OF HINTON THIS 27th DAY OF OCTOBER 2012.

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John Noonan
Presiding Officer

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.*