City of Medicine Ha
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:

Wahl Holdings LTD.,COMPLAINANT

and

The City Of Medicine Hat, RESPONDENT

before:

P. Petry, PRESIDING OFFICER
W. Ziegler, BOARD MEMBER
R. Traichel, BOARD MEMBER

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

ROLL NUMBER	ADDRESS	ASSESSMENT AMOUNT
103579	**503A - 3rd Avenue S.E.**	**$559,890.00**

This complaint was heard on the 27th day of August, 2012 at the City of Medicine Hat Council Chambers, 580 - 1st Street S.E..

Appeared on behalf of the Complainant:

- R. Wahl

Appeared on behalf of the Respondent:

- E. Dubeau, J, Allan and B. Osadchy

Property Description and Background

The subject property is improved with a 1964, 18 suite apartment building consisting of 6 one bedroom units and 2 two bedroom units. The building is two and 1/2 stories with a brick exterior and a flat tar and gravel roof.

The dispute in this case centres on the year over year increase in assessment and the capitalization rate of 5.5% used by the Assessor in developing the 2012 assessment.

This complaint is very similar to that resulting in CARB decision 0217-009/2012. Both parties relied on similar evidence and argument and therefore the decision of the CARB is also similar.

Preliminary Matters

At the outset of the hearing of this matter on August 27, 2012, the Complainant raised a preliminary issue concerning the timeliness of the Respondent's disclosure and the number of days he had to prepare his rebuttal after receiving the City of Medicine Hat (City) materials on August 13, 2012. The Complainant indicated that his disclosure was submitted to the City more than 42 days in advance of the hearing and the lateness of the City's disclosure was unfair and provided insufficient time to prepare his rebuttal. In the morning of August 13, 2012 the Complainant indicated that he had called the City to ask when its disclosure would be made available. The City's materials were delivered to his office that afternoon.

The Respondent indicated that it believed that its disclosure was provided in accordance within the time line provided by the Matters Relating To Assessment and Complainants Regulation (MRAC). The Respondent requested that if it were found to be late in its disclosure then it would like the CARB to consider a postponement.

MRAC 8 (2) (b) and (c) provide the following:

"(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant 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 respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

"(c) the complainant must, at least 7 days before the hearing date, 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 rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing."

Section 22 (3) of the Interpretation Act sets out that the number of days must be "clear" days as follows:

"(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded."

The CARB recessed to consider the disclosure matter with reference to section 8 (2) (b) and (c) of MRAC and section 22 (3) of the Interpretation Act. The CARB concluded that the City's disclosure delivered to the Complainant's office on August 13, 2012 had not provided 14 "clear" days prior to the hearing date of August 27, 2012. Section 22 (3) of the Interpretation Act provides that the counting of days in this circumstance must not include the day of disclosure or the day of the hearing. There must be 14 "clear" days between these two events.

The CARB also considered the provisions of section 22 (2) of the Interpretation Act, however there was no argument or evidence respecting office closing times and there appears to be no intent in section 22 (3) that the 14 "clear" days can be modified. Section 608 of the Municipal Government Act (ACT) provides that documents may be sent by electronic means and in this case both parties are shown to be equipped to handle disclosure exchanges in this manner.

Section 22 (2) of the Interpretation Act provides as follows:

"(2) If in an enactment the time limited for registration or filing of an instrument, or for doing of anything, expires or falls on a day on which the office or place in which the I instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open."

Section 22 (3) makes no reference back to sub-section (2) to indicate that the "clear" days required may be altered by the provisions of sub-section (2). The CARB concludes that 22 (2) relates to circumstances where an expiry date or a specific date on which a thing is to be done and not in circumstances where there are two dates framing an action that calls for "a least" a specified number of "clear" days to allow for fairness to both parties.

If section 22 (1), (2) and (3) were to all apply then it would be possible for the Respondent (if the last day for disclosure fell on a Sunday followed by a holiday) to withhold disclosure until the end of business hours on Tuesday, leaving the Complainant with only 5 "clear" days to file its rebuttal. This outcome would reduce the time for response by almost 30% and in the Board's view cannot have been the intention of the regulations.

The CARB also considered the rebuttal letter of the Complainant which had been delivered to the City on August 20th, 2012 and concluded that it too did not meet the 7 "clear" days required under section 8 (2) (c) of MRAC and section 22 (3) of the Interpretations Act. The same reasoning applies here.

MRAC section (9) (2) sets out the following consequence where disclosures do not comply with section 8:

"(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."

The CARB therefore decided in accordance with the mandatory provisions of section 9 (2) of MRAC that it could not allow the Respondent's disclosure of August 13, 2012 nor the Complainant's rebuttal letter of August 20th, 2012 into evidence The hearing then proceeded on the basis of the Complainant's July 11, 2012 disclosure materials.

The CARB also considered the request of the Respondent for a postponement to allow for more time if required. The Respondent did not bring forward any explanation for its late disclosure nor did it argue that there were exceptional circumstances as required by section 15 (1) of MRAC. The request for postponement was therefore denied.

POSITIONS OF THE PARTIES

The Complainant indicated that in the previous assessment year the parties had some discussion prior to the assessment being produced and the assessed value for 2011 reflected these discussions. The 2011 assessment was at a value of $471,950.00. This years assessment of $559,890.00 represents a 18.5% increase in value when market values have not increased. Rental rates have not increased and vacancy rates have not decreased. The Complainant stated that the 6% vacancy allowance applied by the Assessor is not adequate for a building the age and size of the subject which is experiencing vacancy in the 9% range.

The Complainant argued that the City has considered sales going back to 2007 forward and have arrived at a capitalization (cap) rate of 5.5% while last year the applied cap rate was 6.5%. A decrease in the cap rate is not realistic in the current market. The Complainant provided two sales and argued that if the parameters used by the City are applied to these sales the resulting cap rate is 6.5% plus.

The first comparable provided was for the sale of a 1962 apartment building consisting of 4 one bedroom units and 2 two bedroom units. The property is located at 85 - 2nd Street and sold on June 9th, 2011 for the sum of $369,000.00 or $61,650.00 per unit. The Complainant stated that he had been in this building two years ago and it is in very similar condition to that of the subject and is also similar in location and construction. The suite mix is some what different, however, the sales price is still indicative as the sold property has a higher ratio of two to one bedroom suites than does the subject.

The second comparable was for the sale of a property built in 1952 and located at 459 Aberdeen Street S.E. The building contains a total of 8 units, 6 one bedroom units and 2 two bedroom units. It sold December 2, 2011 for the sum of $390,000.00 or $48,750.00 per unit. The Complainant argued that these sales indicate that the subject would not sell in this market at the assessed value of $559,890.00 and if the cap rate they produced of 6.5% were used, the value of the subject should be the same as it was in 2011.

The Respondent argued that while the Complainant has indicated there are no increases in rent, vacancy is high and the market is flat, there is no evidence before the Board on these assertions.

The Respondent argued that neither of the Complainant's comparables have been used in developing the cap rate or for any other analysis relative to the assessment under complaint as the City uses a cut off date of June 30 and only considers sales which have been registered through land titles. This is as required by a Ministerial Order L206.

The Respondent argued that the approach used to determine a cap rate from the sales is not valid. Income and vacancy levels are not known and therefore a cap rate cannot be determined.

The Respondent urged the CARB not to put weight on these sales as they have not been analysed. The buyers and sellers are not known nor are their intentions or motivations known. The Respondent requested that the assessment be confirmed.

DECISION WITH REASONS

The CARB considered the Complainant's argument that the 18.5% increase in assessment is unrealistic given the generally stable operating factors for the subject and little change in the market overall. The CARB accepts the fact that assessments are for one year only and that the assessment criteria has changed substantially this year. In the subject case the previous years assessment was arrived at after the parties discussions and one would expect that the resulting value was generally agreeable as no complaint was forthcoming. This being the case the 18.5% increase raises some question as to why the significant change and what may be occurring in the market place which would support this increase.

The CARB, however, in this case did not have any evidence respecting general market change or specific change or lack thereof with respect to the subject. We agree to some extent with the Complainant that the general market has not experienced a large shift over the past year.

The CARB considered the Complainant's position respecting vacancy. The Complainant had not produced any data on actual vacancy for the subject for the preceding two or three years leading up to the assessment, therefore further consideration has not been made regarding vacancy.

The CARB then turned to the sales comparisons offered by the Complainant. The CARB does not agree with the Respondent that the sale which occurred on June 9, 2011 is outside an appropriate period for analysis for the subject assessment. The Ministers Order respecting the audit function for the assessment roll has no bearing on what evidence can or should be considered in an assessment complaint. The sale which occurred on December 2, 2011, on the other hand is post-facto respecting the July 1 valuation date and therefore is less helpful.

This sale at 459 Aberdeen Street S.E. was not considered to be sufficiently similar to warrant much weight for the following reasons: It is over ten years older then the subject, it does not appear to be similar in construction and it has a different suite mix than that of the subject. The selling price was $48,750 per suite, a significantly lower value than the value of $58,994 per suite that is sought by the Complainant. This sale is also post-facto and outside the window for direct analysis.

The sale at 85 - 2nd Street, on the other hand appears to be more similar to the subject and the sales date is very close to the valuation date of July1, 2011. This building is almost the same age as the subject, similar in condition and appearance to the subject and is similar in location. Although the suite mix is different than that of the subject the higher ratio of two to one bedrooms would typically produce a higher value then would be the case for the subject. The Respondent cautioned the Board that this sale had not been analysed and may not be valid. The CARB notes that the Respondent has known for some time that this sale would be before the CARB in this appeal and yet appears not to have investigated the sale. The CARB has concluded that this sale is the best evidence before the Board and has determined that the selling price of $61,650 per unit is the best reflection of the market value for the subject property at July 1, 2011. This value multiplied by the subject's 8 units results in a value of $493,200.00.

In light of the reasons provided above the CARB has decided to reduce the assessment for the subject property to $493,200.00.

It is so ordered.

DATED AT THE CITY OF LETHBRIDGE THIS 8th DAY OF SEPTEMBER, 2012.

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 in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).

470(3) *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*

(α) the assessment review board, and

(β**)** *any other persons as the judge directs*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Residential	Multi-Residential	Apartment	Cap rate/value	