



REGIONAL MUNICIPALITY
OF WOOD BUFFALO

Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO CARB BOARD ORDER 003-2011-P

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part II of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Regional Municipality of Wood Buffalo represented by Reynolds Mirth Richards and Farmer – Complainant

- and -

Colliers International represented by Wilson Laycraft – Respondent

BEFORE:

Member:

J. Gilmour, Presiding Officer

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Board Administration:

N. MacDonald, Assessment Review Board Clerk

A preliminary hearing was held on June 29, 2011 in Fort McMurray in the Province of Alberta to consider complaints about the assessments of the following two properties:

- Property at 10025 Gordon Street – Assessment \$10,667,860.
- Property at 4 Haineault Street – Assessment \$39,249,540.

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The units under appeal are two condominium properties located within the Municipality at:

- 10025 Gordon Street, 27 units, identified as the Nomad Extended Stay Hotel; and
- 4 Haineault Street, 50 units, identified as the Clearwater Suite Hotel.

The Complainant requested the CARB to consider the following issues:

1. Does the CARB have jurisdiction to hear the complaint?
2. Should the assessment complaints relating to the two condominium complexes be directed to a local ARB (LARB) or the CARB?

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

Legislation

1. Section 285 of the Act requires that the Municipality prepare an assessment for each property in the municipality. The terms “assessment” and “property” are defined in, sections 284(1) and (r) of the Act.
2. Section 290.1(1) requires that each condominium unit and the share in the common property that is assigned to the unit must be assessed as if it is a parcel of land and the improvements to it.
3. Section 460.1(1) of the Act states that a local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on
 - a. An assessment notice for
 - i. residential property with 3 or fewer dwelling units
4. Section 460(2) states that a CARB “has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a)”.

Position of the Parties

The Complainant argued that each condominium unit for the two properties had a separate certificate of title although each of the properties had one owner. Assessment notices recognized 177 single dwelling units, as noted in the *Calgary (City) v. Lougheed & Company* 2001 Alberta Queens Bench decision.

The Complainant argued that the 177 units should be valued on the direct sales approach and that any such appeals for the two properties should be heard by the LARB and not the CARB.

The Respondent argued that there were a number of previous CARB decisions last year which held that the two property appeals should be heard by a CARB, and not a LARB. None of the facts had

changed as acknowledged by the Complainant from the complaints of the two properties last year. The reasons for the earlier CARB decisions can be summarized as follows:

- the two properties were built and operate as hotels;
- the condominium units do not sell as individual “residential” units;
- there is no relationship of these properties conforming with s. 460.1(1) of the Act as “residential” properties;
- section 460(2) of the Act gives the CARB the authority to hear an assessment appeal, not a LARB;
- the 2001 decision of Queens Bench, Calgary (City) v. Lougheed & Company is not applicable, since they are not individual residential properties, but operated on a commercial basis; and
- previous CARB board orders state that the two properties should be valued on the income method, and not the direct sales approach.

Decision

Neither party opposed the CARB from hearing this matter with respect to the first issue in having a one member panel hearing this preliminary matter.

With respect to the issue as to which is the appropriate appeal forum to hear assessment appeals for the two subject properties, this member was referred to a number of earlier CARB decisions last year which held that the CARB is the appropriate appeal body to hear such appeals; and not a LARB. This member reviewed those decisions and had regard for them in the course of deciding this appeal.

It is clear and not in dispute by either party that the two properties were built at the outset to operate as hotels and not as “residential” class condominium units. They compete on the open market with other commercial hotels operating in the Municipality. The assessment notices could refer to the properties as residential as per s. 460.1(1) of the Act, but they are in fact, based on their physical and operational characteristics, more likely to conform to the requirements described in s. 460(2) of the Act as a CARB; rather than a LARB in s. 460.1(1) of the Act.

The Complainant in evidence indicated that there were no factual changes from last year but that they disagreed with the decisions reached by the CARB at the three earlier hearings. The Complainant offered no explanation of why it did not appeal the decisions of the CARBS in relation to this matter.

With reference to earlier CARB decisions last year pertaining to these two properties, Board Order CARB 002/2010P, dated 24 June 2010, stated as follows:

In reference to the Gordon Street property, in its decision it held the units to be “commercial property”. On the last page of its decision, the Board held “A hotel condominium is not a dwelling, though it may look and sometimes act as one. It is better compared to a business condo where any number of separate owners share common property but have control over their individual warehouse lays. Complaints regarding this type of property, non-residential, are to be heard by the municipality CARB.”

On page 5 of Board Order CARB 010-2010, dated 12 October 2010, the panel determined that the Clearwater Suite Hotel “was originally designed as a hotel and it has never operated as anything other”.

On page 8 of the same decision, the panel stated:

“An operating hotel is, in the judgment of the CARB, a non-residential class of property and its value cannot reasonably be derived from the sales of residential condominiums any more so than the value of an office or industrial property that happens to be a condominium can be related to such sales. It is the judgment of this Board that the most reasonable method for estimating the value of the subject property would be found through the application of the Income Approach, applied to the property as a whole and then dividing same by the number of units to produce an estimated value per unit. Does such a method defy the Rowbotham Decision [(Calgary) (City) v. Loughheed & Company], we think not as the circumstances are entirely different. The Rowbotham Decision related to two properties competing in the same market for the same tenant; however this is not the case before us. Additionally, the CARB gives consideration to the issue of equity and the fact that competing hotels within the municipality are valued for assessment purposes using the Income Approach.”

In the last Board Order, CARB 011-2010, dated 12 October 2010, the CARB panel refers to condominiums in the municipality operating as hotels, on page 5 of its decision:

“It is clear to the CARB that the subject property is an operating hotel which provides accommodations for a fee to the travelling public on a nightly or beyond basis. The property is located within the central core area of Fort McMurray close to a casino, hardly a typical residential neighbourhood. An operating hotel is, in the judgment of the CARB, a non-residential class of property and its value cannot reasonably be derived from the sales of residential condominiums any more so than the value of an office or industrial property that happens to be a condominium can be related to such sales.”


The Board has determined that the two subject property appeals should be heard by the municipal CARB, and not a LARB for the following reasons. Although the previous CARB Board Orders of last year are not binding upon this CARB, this member has reviewed the decisions and finds that the rationale from those decisions can be applied to the current appeals. There has been no change of facts from the previous year. The character of the property has not changed: the hotel condominium is not residential in character, but is better compared to a business condominium. Therefore, this appeal should be heard by a CARB.

With reference to Schedule 3 of Matters Relating to Assessment Complaints Regulation AR 310/209, (MRAC) it is requested that both parties, in writing, submit to this panel by August 25, 2011 arguments to include the following questions:

1. Can a single CARB panel member award costs as per Schedule 3?
2. If answer to (a) is affirmative, provide argument whether costs should be awarded or not by the panel.
3. As per Schedule 3, what should the amount of costs be awarded by the panel and to whom should such costs go to?

It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 19th day of July 2011.


For: Presiding Officer, J. Gilmore

APPENDIX "A"

Documents received and considered by the CARB.

<u>No.</u>	<u>Item</u>
C1	Evidence of the Complainant
R2	Evidence of the Respondent

APPENDIX "B"

Oral Representations

<u>Persons Appearing</u>	<u>Capacity</u>
C. M. Zukiwski	Counsel for the Complainant
G. Ludwig	Counsel for the Respondent