

**THE REGIONAL MUNICIPALITY OF WOOD BUFFALO
COMPOSITE ASSESSMENT REVIEW BOARD**

Citation: **Regional Municipality of Wood Buffalo v Athabasca Tribal Council Corporation,**
[2019] RMWBCARB 19-017-P

In the matter of the complaint against a property assessment as provided by section 460 of the
Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26 (the *Act*)

Between:

ATHABASCA TRIBAL COUNCIL CORPORATION

Respondent
(Complainant)

- and -

THE REGIONAL MUNICIPALITY OF WOOD BUFFALO

Applicant
(Municipality)

DECISION OF
J. Krysa, Presiding Officer

This is the decision from a jurisdictional hearing before the Regional Municipality of Wood Buffalo Composite Assessment Review Board, to determine the validity of the complaint filed in respect of the property assessment prepared by the Assessor of the Regional Municipality of Wood Buffalo, and entered in the 2018 Assessment Roll for taxation in 2019, as follows:

ROLL NUMBER:	60905560
MUNICIPAL ADDRESS:	9206 McCormick Drive
FILE NUMBER:	ARB 19-017-P
ASSESSMENT:	\$1,871,450

Procedural Matters

[1] The Composite Assessment Review Board derives its authority to make a decision under Part 11 of the *Act*. This matter was heard and decided by a one-member composite assessment review board pursuant to s. 40(c) of the *Matters Relating to Assessment Complaints Regulation*, AR 201/2017. There was no objection to the board member assigned to hear and decide the matter from either party.

Background

[2] The Regional Municipality of Wood Buffalo made an application to the Regional Municipality of Wood Buffalo Composite Assessment Review Board to dismiss the complaint pursuant to s. 295(4) of the *Act*.

[3] A jurisdictional hearing was scheduled to determine the validity of the complaint filed by the respondent (the Complainant) in respect of the non-residential property assessment described above.

[4] The matter was heard via teleconference at 2:30 p.m. on the 17th day of July, 2019.

Overview

The Property

[5] The subject property is a one storey, owner-occupied office building located in the Waterways subdivision of Fort McMurray, Alberta.

The Assessment

[6] The assessment of the property was prepared by means of the income approach to value.

Legislation

[7] The applicable statutory provisions are set out in Appendix A to this decision.

Representations

[8] The parties in attendance at the proceeding are set out in Appendix B to this decision.

Exhibits

[9] The documents filed as exhibits during the hearing are set out in Appendix C to this decision.

Issue

[10] The issue before the Board is whether the Complainant can make a complaint about the assessment under s. 460 of the *Act* in the 2019 taxation year.

Position of the Applicant (Municipality)

[11] The applicant provided a 25 page evidentiary package to the Board.

[12] The applicant submits that the respondent failed to provide information in response to a request made pursuant to s. 295(1) of the *Act*, and s. 295(4) states that a complaint cannot be made if information is not provided under s. 295(1). The applicant requests that the Board dismiss the complaint and deny a merit hearing.

[13] Ms. J. Peyton provided the following testimony on behalf of the applicant.

1. A request for information letter was sent to the owner of the property at the address on file in the municipality on March 29, 2018.¹ The letter set out a June 8, 2018 filing deadline.
2. A reminder letter was sent to the owner of the property at the address on file in the municipality on May 16, 2018.²
3. Assessment and the tax notices were sent to the same address on file in the municipality.
4. As the respondent was able to respond to the assessment notice and file the complaint, and as the taxes have been paid in full, the applicant can assume the request for information and reminder letters sent to the same address were received by the owner.
5. The information sought in the request included information in respect of the tenant roll, leases, year-end financial statements, and yearly expenses for owner-occupied props. The information is used to determine typical rents and typical expenses to establish valuations based on the income approach to value.
6. No information was provided from the respondent in response to the request.

[14] The applicant provided two decisions of the Town of Okotoks Composite Assessment Review Board, and one decision from the City of Leduc Composite Assessment Review Board in support of the application.

Position of the Respondent (Complainant)

[15] The respondent provided a 102 page evidentiary package to the Board.

[16] Mr. Z. Bhatti provided the following testimony on behalf of the respondent.

1. The property is an owner-occupied building, occupied by a not for profit organization.
2. Mr. Bhatti has only recently become employed with the organization, and is unaware of whether the former finance director complied with the assessor's 2018 request for information.
3. Information has been provided in response to the assessor's current (2019) request for information.
4. A review of the assessment is required as an appraisal of the property indicates a market value below that established by the municipality.

¹ Exhibit A1, Page 2

² Exhibit A1, Page 3

Decision

[17] For the reasons outlined herein, the applicant's s. 295(4) application is dismissed. The complaint filed on April 26, 2019 is valid and will proceed to a merit hearing. If a merit hearing has not yet been scheduled, the Board directs the administration of the Regional Municipality of Wood Buffalo Assessment Review Board to schedule a hearing on the merits of the complaint in accordance with the requirements of the *Act* and the regulations.

Reasons

[18] The leading authority relevant to this issue is *Boardwalk*³. In *Boardwalk*, the Alberta Court of Appeal established that the loss of the right of complaint was not automatic, mechanical, or obvious, and that the aim of the legislation is compliance, not punishment. Further, the Court adopted and clarified the relevant issues of fact predicate to any finding that an appellant failed to comply with a request for information pursuant to section 295(1) of the *Act* from *Amoco*⁴, an earlier decision of the Alberta Court of Appeal.

[19] Administrative tribunals have a duty to consider decisions of the Courts. Accordingly, the Board examined the preconditions set out by the Courts in relation to the subject application.

a) Was there a request for information?

[20] The applicant provided a copy of a request for information letter referencing an attached 'Request for Information' package, and a copy of a reminder letter. The letters were addressed to the municipal address of the subject property, 9206 McCormick Drive, Fort McMurray, AB T9H 1C7.

[21] Based on the evidence of the applicant, the Board finds there was a request for information. However, there was no documentary evidence provided to confirm that the request was sent to the owner's proper address for service, such as the Certificate of Title exhibiting the owners registered address, or an Assessment or Tax Notice exhibiting its recorded address for service.

b) Was the request made by an assessor?

[22] The request letter was signed by Philip Schofield, Director, Assessment and Taxation.

[23] The Board finds that the request for information was made by an assessor.

c) Was the request in proper form?

[24] The request letter was a one page letter on Regional Municipality of Wood Buffalo letterhead. The request letter set out the tax roll number and municipal address of the property; the reason for the request; the assessor's legislative authority to request information; and the legislated consequences of failure to comply with the request. The request letter invited the reader to contact Barry Campbell if further information was required. The Board was not provided with the request for information 'package' purportedly attached to the request letter.

³ *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220

⁴ *Amoco Canada Petroleum Co. Ltd. v. Alberta*, 2000 ABCA 252

[25] The request letter was comprehensive in respect of the information it contained; however, without evidence of the attached request for information package, the Board cannot find that the request was in a proper form.

d) Was the request in an intelligible form?

[26] The request letter was a clear and concise one page document; however, without evidence of the attached request for information package, the Board cannot find that the request was in an intelligible form.

e) Was the request reasonable having regard to all of the circumstances, including past practice, information already available to the assessor, information available to the owner, etc.?

[27] There was no evidence provided in respect of past practice, past compliance or non-compliance, or whether information provided in the past (if any), or information already available to the assessor was insufficient for the assessor to carry out his duties pursuant to the *Act* and regulations.

[28] Without any evidence in respect of the factors identified above, or evidence of the specific information sought in the attached request for information package, the Board cannot find that the request was reasonable.

f) What information, if any, was provided by (the owner) and what was done with that information?

[29] The applicant maintains that it did not receive any information in response to its 2018 request for information. The respondent submits that he was not employed by the owner at the time of the 2018 request, and could not speak to what information (if any), was provided by the owner.

[30] Based on the evidence of the parties, the Board finds that no information was provided by the respondent.

g) Did the information comply with the request?

[31] Based on the Board's finding above, this issue is not applicable.

h) Was the information necessary?

[32] The Board notes that s. 295(1) the *Act* has been amended since *Amoco* and *Boardwalk*. Whereas the earlier provision required a person to provide “*any information necessary for the assessor to prepare an assessment or determine if property is to be assessed*”, the current provision requires a person to provide “*any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.*”

[33] The applicant submits that the requested information was required to establish market rents, market expenses, and capitalization rates, and the yearly expenses of an owner-occupied property are necessary to establish typical expenses for income approach valuations. Further, there are very few rental or office properties in the subject's Waterways subdivision, and they may exhibit differing vacancy allowances and differing operating incomes.

[34] Without evidence of the attached request for information package, the Board cannot establish what information was requested, and cannot determine if that information was necessary.

[35] The Board applied little weight to the testimony of the applicant, and is not persuaded that the requested information from owner-occupied properties was necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations. There was no compelling evidence or argument to establish that yearly expenses incurred by owner-occupied properties are material to estimating typical expense ratios for income producing properties in a mass appraisal, income approach valuation. Furthermore, the subject property is owner-occupied; therefore, the owner would not have information pertaining to leases, vacancies, a tenant roll, an operating income, or year-end financial statements that could assist the assessor in determining market rents, typical operating expenses, and vacancy rates in the municipality.

Conclusion

[36] The onus of establishing that the eight preconditions set out in Boardwalk are satisfied rests with the applicant. In this matter, there was insufficient documentary evidence to demonstrate that the assessor's request for information was in a proper form, intelligible, and reasonable, and further, that the requested information was necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

Dated this 6th day of August, 2019, at the Regional Municipality of Wood Buffalo, in the Province of Alberta.

FOIP s.17(1)



J. Krysa, Presiding Officer

This decision may be judicially reviewed by the Court of Queen's Bench pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.

APPENDIX A

LEGISLATION

Municipal Government Act, RSA 2000, Chapter M-26

- 295(1)** A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.
- (2)** The Alberta Safety Codes Authority or an agency accredited under the [Safety Codes Act](#) must release, on request by an assessor, information or documents respecting a permit issued under the [Safety Codes Act](#).
- (3)** An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.
- (4)** No person may make a complaint in the year following the assessment year under [section 460](#) or, in the case of designated industrial property, under [section 492\(1\)](#) about an assessment if the person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

Matters Relating to Assessment Complaints Regulation, AR 201/2017

- 40** A one-member composite assessment review board panel may hear and decide one or more of the following matters but no other matter:
- (a) a complaint about a matter shown on an assessment notice, other than an assessment;
 - (b) a procedural matter, including, without limitation, the scheduling of a hearing, the granting or refusal of a postponement or adjournment, an expansion of time and an issue involving the disclosure of evidence;
 - (c) an administrative matter, including, without limitation, an invalid complaint;
 - (d) any matter, other than an assessment, where all of the parties consent to a hearing before a one-member composite assessment review board panel.

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
Julie Peyton	Assessor, Regional Municipality of Wood Buffalo
Zulfiqar Bhatti	Finance Manager, Athabasca Tribal Council Corporation

APPENDIX C

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
A1	Applicant's Submission (25 pages)
C1	Respondent's Submission (102 pages)



One-Member CARB HEARING EXHIBIT LIST

Complaint Information

File No.: ARB 19-069-P

Roll Number	Assessment Type	Assessment Year	Assessment Amount
71006590	Annual	2019	\$7,492,840

Legal Description	Civic Address
616AO,15,5/616AO,15,7	9911 MacDonald Avenue, Fort McMurray AB

Exhibit #	Complainant's Exhibits	Exhibit #	Assessor's Exhibits
C-1.	Respondent's Submission (43 pages)	A-1	Applicant's Submission (25 pages)
C-2.		A-2	
C-3.		A-3	
C-4.		A-4	
C-5.		A-5	
C-6.		A-6	
C-7.		A-7	
C-8.		A-8	
C-9.		A-9	
C-10.		A-10	
C-11.		A-11	
C-12.		A-12	
C-13.		A-13	
C-14.		A-14	
C-15.		A-15	