

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

Citation: **Regional Municipality of Wood Buffalo v Colliers International Ltd., [2019] RMWBCARB 19-069-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:

**COLLIERS INTERNATIONAL LTD.**  
(Representing **ATCO INVESTMENTS LTD.**)

*Respondent*  
(*Complainant*)

- and -

**THE REGIONAL MUNICIPALITY OF WOOD BUFFALO**

*Applicant*  
(*Municipality*)

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**DECISION OF**  
**J. Krysa, Presiding Officer**

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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:	71006590
MUNICIPAL ADDRESS:	9911 MacDonald Avenue
FILE NUMBER:	ARB 19-069-P
ASSESSMENT:	\$7,492,840

**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 18th day of July, 2019.

## **Overview**

### *The Property*

[5] The subject property is a three storey office building located in 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.

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**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.<sup>1</sup> 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.<sup>2</sup>
3. Assessment and the tax notices were sent to the same address on file in the municipality.
4. As the respondent was able to 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 respondent did not provide any information in response to the request for information.
6. The respondent did not provide any of the requested information in respect of market rents and property expenses, or provide any indication that the property is owner-occupied and would not have relevant tenant roll information.
7. The respondent also did not provide any of the requested information relating to major repairs required, and did not provide any indication of when the property was damaged.
8. Major damage would have drastically affected the assessed value of the building; however, the assessor was not aware of the property damage and would need to confirm when the property damage occurred.

[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 its application.

[15] In cross-examination, the applicant acknowledged that it would have adjusted the assessment if it had been aware of the property damage. It maintains that its request for information package sought information about property deficiencies and repair costs; however, it conceded that the package was not in the evidence before the Board. The applicant further conceded that it could not prove the request for information letter and the reminder letter were received by the owner.

[16] Further, the applicant agreed the subject is now effectively owner-occupied; however, it maintains that information in respect of repairs and maintenance and structural repairs from owner-occupied properties is relevant to an income approach valuation, and may affect the capitalization rate applied to a property.

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<sup>1</sup> Exhibit A1, Page 2

<sup>2</sup> Exhibit A1, Page 3

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**Position of the Respondent (Complainant)**

[17] The respondent provided a 43 page evidentiary information package to the Board.

[18] The respondent submits that the circumstances of the subject property are such that the requested information was unnecessary, and immaterial to the preparation of the assessment. The respondent maintains that the application should be dismissed and the matter should proceed to a merit hearing.

[19] Ms. H. Chornoboy provided the following testimony on behalf of the respondent.

1. The subject property has suffered extensive water damage and is not able to be occupied.
2. The building has been vacant for three years.
3. As the building has not been tenanted for the past three years, there is no tenant roll or property income information to report in response to the assessor's request for information.
4. As a result of the vacancy, the information requested was not necessary to determine the assessment of the subject property, and would not have affected the subject assessment as assessments are prepared on typical parameters, and site specific considerations would not contribute to the valuation methodology or assessed parameters.
5. The assessor's request for information did not seek specific information in respect of costs incurred to repair damaged property.

[20] The respondent provided a review of three decisions of the City of Calgary Composite Assessment Review Board, and one decision of the City of Leduc in support of its request.

**Decision**

[21] For the reasons outlined herein, the applicant's s. 295(4) application is dismissed. The complaint filed on April 29, 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**

[22] The leading authority relevant to this issue is *Boardwalk*<sup>3</sup>. 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*<sup>4</sup>, an earlier decision of the Alberta Court of Appeal.

[23] 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.

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<sup>3</sup> *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220

<sup>4</sup> *Amoco Canada Petroleum Co. Ltd. v. Alberta*, 2000 ABCA 252

*a) Was there a request for information?*

[24] 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 owner of the property at 4<sup>th</sup> Floor, West Bldg., 5302 Forand Street SW Calgary AB T3E 8B4.

[25] Based on the evidence of the applicant, the Board finds there was a request for information. However, there was no 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 owner's registered address, or an Assessment or Tax Notice exhibiting its recorded address for service.

*b) Was the request made by an assessor?*

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

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

*c) Was the request in proper form?*

[28] The request letter was a one page letter on Regional Municipality of Wood Buffalo letterhead. The request letter set out the tax roll number, building name, 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.

[29] 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?*

[30] 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.?*

[31] 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.

[32] 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?*

[33] The applicant maintains that it did not receive any information in response to its 2018 request for information. The respondent did not dispute that a response was not provided by the owner.

[34] Based on the evidence of the parties, the Board is satisfied that no information was provided by the respondent.

g) *Did the information comply with the request?*

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

h) *Was the information necessary?*

[36] 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.*”

[37] The applicant concedes that the request for information regarding leases and property income is untenable as the subject property is owner-occupied; however, it maintains that the expenses of an owner-occupied property are necessary to establish typical expenses for income approach valuations. Further, the requested information in respect of property deficiencies and repair costs was necessary to determine an appropriate capitalization rate or site-specific adjustment for the subject property.

[38] The respondent submits that the requested information was not necessary as the assessor was able to prepare an assessment of the subject property without any information from the owner, and further, assessments are prepared on typical parameters and site specific considerations would not contribute to the valuation methodology or assessed parameters employed by the assessor. Moreover, the request for information did not seek information about the costs to repair property damage

[39] The Board rejects the respondent's argument that the requested information was not necessary since the assessor was able to prepare an assessment. Sections 285 and 289(1) of the *Act* clearly require that an assessment must be prepared annually for each property in the municipality, and that the assessments for all property other than designated industrial property, must be prepared by the municipal assessor. An assessment must be prepared for each property regardless of whether or not the assessor has all of the information necessary. The Board also rejects the respondent's argument that information in respect of property deficiencies and repair costs is not necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations. Section 289(2) of the *Act* requires that each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year a tax is imposed.

[40] The Board applied little weight to the testimony of the applicant, and is not persuaded that the requested information from owner-occupied properties is 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.

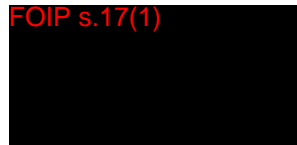
[41] Notwithstanding the above, the specific information requested in the assessor's request for information remains in dispute, and without evidence of the attached request for information package, the Board cannot establish what information was requested, and cannot determine if it was necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

*Conclusion*

[42] 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 6<sup>th</sup> day of August, 2019, at the Regional Municipality of Wood Buffalo, in the Province of Alberta.

FOIP s.17(1)



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J. Krysa, Presiding Officer

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## APPENDIX A

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### 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.

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## APPENDIX B

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### REPRESENTATIONS

<b>Person Appearing</b>	<b>Capacity</b>
Julie Peyton	Assessor, Regional Municipality of Wood Buffalo
Hayley Chornoboy	Colliers International Ltd.
Brendan Neeson	Senior Director, Property Tax Services, Colliers International Ltd.

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## APPENDIX C

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### DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

<b>Exhibit Number</b>	<b>Description</b>
A1	Applicant's Submission (25 pages)
C1	Respondent's Submission (43 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	