

**IN THE MATTER OF A COMPLAINT** filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being chapter M-26 of the revised statutes of Alberta 2000.

**BETWEEN:**

Oaksey Investments Inc. – Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

**BEFORE:**

Members:

D. Woolsey, Presiding Officer

J. Gogo, Member

A. McKenzie, Member

Staff:

A. Hawkins, Clerk

**BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

[1] A hearing was convened on September 12, 2019 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

<b>Assessment Roll Number</b>	40570830
<b>Civic Address</b>	450 Ross Haven Drive, Fort McMurray, AB
<b>Owner</b>	Oaksey Investments Inc.
<b>File Number</b>	ARB 19-068

[2] The subject (the subject) property is a 3.48 acre parcel containing two three-storey walk-up apartment buildings named Marsh Manor and Thompson Manor. They were built in 1984 and are located in Thickwood Heights, a 40 year-old neighbourhood with 28-40 year old apartments. In the two buildings there are 86 suites with two 1-bedroom, fifty-nine 2-bedroom and twenty-four 3-bedroom and one bachelor suite. The property is in average condition and quality.

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**PROCEDURAL MATTERS**

The CARB derives its authority to make decision under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. The parties confirmed that they had no objections to the composition of the Board.

[3] The Board confirmed it had no bias in relation to the matters.

**PRELIMINARY MATTERS**

*Issue*

[4] Does the Board agree to black out pages 1 to 4 in Respondent's evidence package R3?

*Position of the Respondent*

[5] The financial information contained in these pages is sensitive to the property owners who provided it to the assessor to prepare assessments.

*Position of the Complainant*

[6] The Complainant does not object to blocking this information from the record.

**PRELIMINARY DECISION**

[7] It is the decision of the Composite Assessment Review Board to black out or seal this information from the evidence package as there was no objections from the Complainant and the Board accepts the evidence as being sensitive to the business interests of the provider of the information.

[8] It is so ordered.

**ISSUES**

<b>Issue identified on the complaint form</b>	<b>Assessment Amount</b>	<b>Requested Value</b>
An Assessment Amount	\$11,422,500	\$6,450,000

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- [9] Is the assessment fair and equitable in relation to similar properties?
- a) Is the income applied correct?
  - b) Is the expense applied correct?
  - c) Did the database used by the assessor result in incorrect data being applied in preparing the assessment?
  - d) Is the vacancy rate applied too low?
  - e) Is the correct capitalization rate applied to the subject property?
  - f) Is the appropriate strata applied?
  - g) Should actual values be used in preparing the assessment and not typical values?

### **MERIT MATTERS**

#### ***Position of the Complainant***

[10] The Complainant presented evidence and argument in support of its requested assessment of \$6,450,000. In its evidence and argument it was shown that the efforts of the property owner to maintain quality and attractive housing, in a competitive market place, is not reflected in a fair assessment of the subject property.

[11] The subject was assessed with a gross annual rental value of \$1,269,216 which is excessive compared to the income produced by the subject property. It does not take into consideration the significant incentives required for leasing apartments, the actual vacancy and the significant bad debts experienced by the property owner. The property was assessed based upon an income of \$1,269,216. The actual income due to bad debt not reflected on the rent roll, inducements and vacancy is \$1,192,700 resulting in the property being over-assessed by \$76,516.

[12] The property was assessed using an expense ratio of 28%. This is materially insufficient as the actual expenses were 63%. The property owner takes great pride in maintaining its property and the annual expense costs are not reflected in the assessment. An expense ratio of 45% is supported by the 3-year comparative operating statements. The recent sale of Krista Court that is a similar property to the subject and has an expense ratio of 49.5% supports the requested 45%.

[13] The assessor needs to be accountable and redress assessment when information proves beyond a doubt that incorrect database information is being used to prepare the assessments. The sale of Krista Court for \$3,500,000 and assessment of \$6,946,000 supports this conclusion.

[14] The actual vacancy rate of 32% is a more accurate reflection of the market than the 28% applied in the assessment. Vacancy and expense ratios are not just numbers, every single suite and small expense is felt and managed to the smallest detail. Again, the sale of Krista Court with a vacancy of 40% and its similarities with the subject, supports this conclusion.

[15] The use of a capitalization rate of 7% is overstated. The actual market established cap rate of 11.97% established in the sale of Krista Court is more reflective of the market place, even though it is a post facto sale.

[16] The Complainant agrees that the placement of the subject in strata 2 is correct. However, it disagrees with the use of the 7% cap rate applied to strata 2 properties for the reasons stated above.

[17] Recent evidence from brokers indicate a 2018/19 price list of \$70,000/door. While this is post facto, it is indicative of how excessive the 2019 assessment appears with a value of \$151,797/door.

[18] The assessment is unfair and not indicative of the actual conditions of the subject property. There are many questions left unanswered or not shared on the weighting of properties or neighbourhoods and operating assumptions that are used in the assessment. More landlord involvement is necessary to make assessments accurate and believable.

### ***Position of the Respondent***

[19] The Respondent presented an outline of how assessment is calculated for income producing properties using the income approach to value. Specifically, it outlined the legislative requirement to use mass appraisal when valuing properties and the methodology for assessing Multi-Residential properties with eight or more dwelling units.

[20] The Respondent detailed the income approach, the setting of strata by effective year built and the typical values applied for each strata for: market rent, vacancy allowance, expense ratio and capitalization rate.

[21] In its presentation the Respondent outlined the request for information (RFI) process and the response rate for the RFI requests to property owners. In 2019 there are 81 separately titled apartment buildings and 46 responded to the RFI requests. The subject was placed in strata 2 for buildings with an effective year built from 1980 to 1999. Neither party disputed the placement of the subject in strata 2. Nine properties, including the subject, were responded to in strata 2.

[22] Further, the Respondent outlined the process for validating sales information received from Land Titles including conducting inspections and interviews and sales validation questionnaires. It was noted that sales reflect the value of a property as of the sales date and thus may not always be the equivalent to their assessed value.

[23] The specific rates applied through the RFI process were applied to all strata 2 properties in the same way. These values are typical values which the assessor is required to apply by legislation. The typical market income for bachelor suites was \$1,200, for 1-bedroom \$1,300 for 2-bedroom \$1,500 and for 3-bedroom \$1,800. The vacancy rate was 22%, the expense ratio 37% and the cap rate 7%.

[24] The Krista Court property is a post facto sale which the assessor did not have at the time that the assessments were prepared. It is unclear where the information comes from that is contained on the sales sheet from the Network. The sales sheet reports a vacancy of 20% yet the actual vendor of the property stated the reason this property dropped from the listing price of \$5,500,000 to the sale price of \$3,500,000 was because the actual net operating income, including the 46% vacancy rate at the time of the sale, was only \$225,000.

### **DECISION**

[25] It is the Decision of the CARB to confirm the revised assessment at \$11,422,500.

### **REASON FOR DECISION**

[26] The assessor is required by legislation (MRAT section 5) to assess properties using mass appraisal and the assessments must reflect typical market conditions for properties similar to that property. The assessor in assessing the subject property took assessments from all similar properties that provided responses to the RFI and developed typical values to apply to the subject. It was shown in calculation of the revised assessment (reduced from over \$13 million to \$11,422,500) that these values were fairly applied to the subject.

[27] The parties agreed that the proper strata to apply to the subject was strata 2. In this matter it appeared that the main concerns of the Complainant were regarding the cap rate and expenses applied to the property. Court decisions have made it clear that typical and actual values cannot be mixed in deriving an assessment. Therefore, it had to be shown by the Complainant that the subject property did not fit in the same market as the properties in strata 2 or was not a similar property. In reviewing the RFI responses of the

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comparable properties the subject fit in the group in age. It did not have the highest expenses or highest vacancies so it fit in between comparable properties in both of those ranges. It was lower in the range of rents but was still within reasonable income level with the other properties in the strata. Therefore, the Board found that the subject was fairly assessed by the assessor and the typical rates were properly applied to the subject.

[28] The Board noted that all properties listed in strata 2 were assessed in the same way with the same values for each variable. There was no evidence presented by the Complainant challenging that the assessment of the subject was not done the same as the assessment for the similar properties.

[29] The Board also recognized that the choice of the property owner to have higher expenses was largely due to its business choice to make significant repairs and maintenance, especially to its Thompson Manor property where its total expenses were at 76.6%. The Board noted that the Marsh Manor property was at 45.4% which places it close to the average of the remaining properties in the strata.

[30] On the Complainant's requested cap rate of 11.97% the Board found that this cap rate did not fit in any of the strata and was not supported by any evidence except the post facto sale. Since the Network representative who prepared the sales information sheet was not in attendance to be questioned it is not possible to determine what inputs existed to determine how the cap rate was arrived at or if it had similar conditions to the subject. Therefore, the Board placed little weight on this sale or the reported cap rate. Lastly, even if it was a comparable one sale does not a market make and this sale appears to be unique in comparison to others in the market place.

[31] In coming to its conclusion, the Board has reviewed carefully the provisions of the *Municipal Government Act* ("MGA"), the *Matters Relating to Assessment Complaints Regulation* ("MRAC") and the *Matters Relating to Assessment and Taxation Regulation* ("MRAT").

[32] It is so ordered.

### **DISSENTING OPINION**

[33] There was no dissenting opinion.

[34] The decision of the Composite Assessment Review Boards is final and binding on all parties. 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*.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this  
26<sup>th</sup> day of September 2019.

FOIP ACT s.17(1)



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Dennis Woolsey, Presiding Officer

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**APPENDIX A**

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DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

<b>Exhibit Number</b>	<b>Description</b>
C-1	Complainant's Disclosure (50 pages) and
C-2	Complainant's Rebuttal (7 pages)
R-1	Respondent's Disclosure (44 pages)
R-2	RMWB Law & Legislation Brief (57 pages)
R-3	Assessment Information Request (Sealed as raised as Preliminary Matter)

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**APPENDIX B**

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REPRESENTATIONS

<b>Person Appearing</b>	<b>Capacity</b>
Alex Tutschek	Representing Oaksey Investments Inc.
Beth Tutschek	Senior Executive, Oaksey Investments Inc.
Barry Campbell	Supervisor, Assessment Department, Regional Municipality of Wood Buffalo
Julie Peyton	Assessor, Regional Municipality of Wood Buffalo
Cindy Chiasson	Observing Assessor

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**APPENDIX C**

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LEGISLATION

**Decisions of assessment review board**

467(1) An assessment review board may, with respect to any matter referred to in section 467(1) make a change to an assessment roll or tax roll or decide that no change is required.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.



**ALBERTA REGULATION 203/2017**  
**Municipal Government Act**  
**MATTERS RELATING TO ASSESSMENT**  
**AND TAXATION REGULATION, 2018**

**Mass appraisal**

- 5** An assessment of property based on market value
- (a) must be prepared using mass appraisal,
  - (b) must be an estimate of the value of the fee simple estate in the property, and
  - (c) must reflect typical market conditions for properties similar to that property.