

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 (Act).

BETWEEN:

Colliers International Realty Advisors Inc. - Complainant

- a n d -

Regional Municipality of Wood Buffalo - Respondent

BEFORE:

Member:

J. Noonan, Presiding Officer

A hearing was held on June 21, 2010 in Fort McMurray in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

220721	10025 Gordon Ave	RMWB file 10-079
627101	230 Wilson Drive	RMWB file 10-080
726189	108 Loutit Road	RMWB file 10-081
726143	104 Loutit Road	RMWB file 10-082
820043	262 Powder Drive	RMWB file 10-083

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The properties identified above are condominium properties located in Fort McMurray, Alberta. With the exception of the first roll, all are identified on their respective notices of assessment as “condominium walk-up rental” or “condominium row housing rental” and their tax class as residential or multi residential. The assessments for the 27 units at the first roll identify the property as apartment hotel – condominium and the tax class as commercial.

Starting from file 10-080 these condo complexes comprise 107, 111, 64 and 72 units. Each unit receives its individual annual assessment notice, as do the units at the first file, 10-079.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. The Clerk of the Assessment Review Board asked the CARB to determine the following jurisdictional issue:

- Preliminary issue 1: Should the assessment complaints relating to the condominium units be directed to a local ARB (LARB) or combined ARB (CARB)?

Neither Complainant nor Respondent attended the hearing, nor submitted evidence. In correspondence with the Clerk, neither party took a position and indicated willingness to proceed to hearing whatever the composition of the panel.

The CARB solicited information from Mr. Henk Van Waas, Regional Assessor for the municipality. Mr. Van Waas advised that the assessments for roll 220721 (file 10-079) were prepared using the capitalized income approach as it was a commercial property and the assessment would be defended at hearing by comparison to other hotel properties. Despite its condominium status, the subject operates as a suite-hotel, offering long and short term accommodation.

In contrast, the other identified files are classified as “other residential” and thus qualify for the mill rate applicable to row housing and apartments. These assessments are prepared and defended on the sales comparison approach.

Decision:

The roll numbers associated with RMWB files 10-080 through and including 10-083 are residential property and their assessment complaints are to be heard by the Regional Municipality of Wood Buffalo Local Assessment Review Board.

For RMWB file 10-079, the CARB finds the subject 27 units commercial property, and those complaints are to be heard by the RMWB Composite Assessment Review Board.

The jurisdiction of local and composite ARBs is set out at *Municipal Government Act* ss 460.1(1) and (2). A local board is to hear complaints relating to residential property with three or fewer dwelling units or farm land. A composite board is to hear cases related to all other types of property.

The Rowbotham decision or more properly *Calgary (City) v Lougheed & Co*, 2001 ABQB 371 has guided the assessment treatment of residential and other condominium property in Alberta. In that case, each individual condo unit in a highrise apartment building in Calgary had been valued by the assessor. The MGB at the time decided that as all units were owned by the same entity and operated as an apartment building, that the total property ought to be assessed in the same fashion as its competitors. Madame Justice Rowbotham rejected this view and established that each individual condo unit and its proportionate share of the common property required a separate valuation for assessment purposes.

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Consequently, each condo unit in an apartment or row housing development is a dwelling unto itself and an assessment complaint must be heard by the local ARB. 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 bays, for instance. Complaints regarding this type of property, non-residential, are to be heard by the municipality's CARB.

It is so ordered.

Dated at Fort McMurray in the Province of Alberta, this 24th day of June, 2010.

Nicole J MacDonald, Clerk of the Assessment Review Board
For: J. Noonan, Presiding Officer