Complaint ID: 0262 1676
Roll Number: 30008800580

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: May 25, 2022

PRESIDING OFFICER: H. Kim

BETWEEN:

Vigilant Investments Inc.
as represented by Altus Group Limited

Complainant

-and-

The City of Red Deer

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30008800580

MUNICIPAL ADDRESS: 129 Queens Dr

This is an application by the Respondent City of Red Deer to dismiss the subject complaint. The matter was heard by a one-member panel of the Composite Assessment Review Board (CARB) on the 25th day of May 2022, via videoconference.

Appeared on behalf of the Applicant:	J. Miller, City of Red Deer T. Johnson, City of Red Deer G. Plester, Brownlee LLP, Counsel
Appeared on behalf of the Respondent (Complainant):	A. Izard, Altus Group B. Foden, Altus Group J. Buchanan, Lawson Lundell, Counsel

DECISION

The application is denied.

JURISDICTION

[1] The Central Alberta Regional Assessment Review Board (Board) has been established in accordance with section 455 of the *Municipal Government Act,* RSA 2000, c M-26 (*Act*).

[2] The *Matters Relating to Assessment Complaints Regulation* AR 201/2017 (*MRAC*), allows the matter to be set for a preliminary hearing to be considered by a one-member panel:

> 40 A one-member composite assessment review board panel may hear and decide one or more of the following matters but no other matter:
> ...
> (c) an administrative matter, including, without limitation, an invalid complaint;
> …

BACKGROUND

[3] A one-member panel of the Board was convened for a preliminary hearing to consider applications by the Respondent to dismiss a complaint due to non-compliance with s. 295 of the *Act*. Section 295 states:

> 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.
> …
> (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.

[4] This hearing was one of a number of hearings with respect to this application, which was made with respect to a number of complaints. The first application was heard in detail, with extensive legal argument from both the Applicant and the Respondent (Complainant). With the agreement of the parties, only the differentiating facts were presented in detail, and the legal argument carried forward for all of the applications.

[5] The subject property is a single-tenant warehouse assessed on the income approach, with additions for excess land and craneways.

ISSUE

[6] The only issue in this preliminary hearing is whether the complaints should be dismissed pursuant to s. 295(4) of the Act, specifically, whether there was substantial compliance with the information request pursuant to s. 295(1) of the *Act*.

POSITION OF THE PARTIES

Position of the Applicant

[7] The City of Red Deer (City) sends an annual assessment request for information (ARFI) to all assessed persons of non-residential property as a key part of its assessment process. For the subject property, the ARFI consisted of a cover letter explaining the request, citing section 295, along with a standardized form to be completed and returned. The form was titled "Rental Information" with columns listing information such as Occupant names(s) and type, leased area, commencement date, renewal date, expiry date, lease type, base rent, parking and signage income, operating cost recovery, rent escalations and whether the owner or the tenant paid for expenses such as property taxes, structural maintenance, general maintenance/repair, utilities, and management. An initial ARFI was sent to the property owner on April 30, 2021 with a response deadline of July 15, 2021. Prior to the deadline, the ARFI was sent again as a reminder letter. No response was received, and after the deadline passed, the ARFI was sent a third time with a cover letter informing of non-compliance, but also indicating that the requested information could still be provided. No response was received.

[8] Each of the ARFI letters were mailed to the property owner's address as listed on the certificate of title. The ARFI stated that the information requested would be used "for the purpose of determining a fair and equitable assessed value of your property," and cited s. 295 of the *Act*. The third ARFI letter also included an explicit warning that failure to provide the information may result in the loss of your right to make a complaint against this property in the next taxation year. None of the information requested was received, and the City completed the assessments based on the information it had available to it, and issued its assessment notices. The taxpayer filed an assessment complaint.

[9] The Applicant argued that s. 295(4) of the *Act* provides that due to the non-response, the property owner could not file the subject complaint. The provisions of s. 295 strike a balance between a municipality's need to receive information necessary to prepare assessments, and an assessed person's right of complaint. On the one hand, the loss of a right of appeal is a serious consequence for non-compliance - s. 295(4) requires great deal of caution and specific examination of facts, and cannot be imposed in an automatic, mechanical, or rigid manner. On the other hand, the right to appeal a property assessment is not absolute and a property owner has responsibilities that must be met before a complaint can proceed, including the responsibility to provide information to the assessor when requested.

[10] Given the need to balance these competing concerns, the courts, Municipal Government Board (MGB) and CARBs have set out guidelines to ensure that s. 295(4) is applied in a fair and reasonable manner. The Alberta Court of Appeal, in *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220 (*Boardwalk*) established a list of eight factors that should be satisfied before invoking section 295(4):

1. Was there a request for information?
2. Was the request made by an assessor?
3. Was the request in the proper form?
4. Was the request in an intelligible form?

5. 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.?
6. What information, if any, was provided, and what was done with that information?
7. Did the information provided comply with the request?
8. Was the information necessary?

[11]With respect to Items 1 through 4, the Applicant sent the ARFIs to the property owner, clearly presented as formal written requests made by City assessors with respect to the information required, the statutory authority for the request for information, how the information was to be provided, and the required timeline for providing this information. The property owner was also informed of the consequences of non-compliance. The *Act* does not require the Applicant to send multiple letters, but it did so to increase the likelihood of compliance. The *Interpretation Act* provides for presumption of service, and, in any event, the Complainant clearly received the assessment notice because it was mailed to the same address on title and a complaint was filed.

[12]Items 5 through 7 reflect that s. 295 authorizes only reasonable information requests, and penalizes only unreasonable failure to answer them. The Applicant did not request excessively detailed information that would fall outside the property owner's knowledge – it was information with respect to the characteristics, and the income and expenses associated with the subject properties. If not all of the requested information is available to the property owner, there is still a requirement to provide what is available.

[13]With respect to item 8, the Applicant agrees that some leasing information was provided, however there was no response to the ARFI and the compete form was not submitted. Information such as rent abatements and subsidies from benefits available during the pandemic are also necessary to prepare the assessment. To illustrate, the complaint forms for the subject properties listed the following reasons for complaint:

> The assessed area has been applied incorrectly based on s. 289 of the Act and should be revised accordingly.
>
> The Municipality has not correctly or adequately adjusted the decline in market value of the subject property for typical revenue/collection loss and/or economic obsolescence caused by the COVID 19 pandemic.
>
> The Complainant's estimate of value using the Income Approach suggests that the current assessed value is unfair, inequitable and incorrect based on market leases and equity.
>
> a) The Vacancy Allowance at the subject should be no lower than 18%
> b) The Operating Cost/Vacant Space Shortfall Allowance should be no less than $8psf
> c) The Non-Recoverable/Reserve for Replacement Allowance should be no less than a combined 5%
> d) The Capitalization Rate should be no lower than 8%
> e) The Industrial Warehouse / 4, at the subject should be no higher than $7psf
> f) The Industrial Warehouse / 6, at the subject should be no higher than $9psf
> g) The WHSE – Office Mezz / 3, at the subject should be no higher than $2psf
> h) The WHSE – Office Mezz / 6, at the subject should be no higher than $4.50psf

[14]This demonstrates that the information requested in the ARFI was necessary to accurately assess the subject property; however, this degree of necessity is no longer required by the *Act*. The wording of s. 295(1) in the cases cited required a person to provide information "necessary for the assessor to prepare an assessment." In 2018 the *Act* was amended and s. 295(1) now states information "necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations." This is broader wording, which expands the matters for which the requested information is necessary - for example, evaluating assessment methodology generally using statistical comparisons or preparing for assessment complaints.

[15]Information submitted during the Customer Review Period prior to the complaint deadline is not the same as the ARFI process: the review process looks at valuation in the prior year, while the ARFI requests current information. They are two separate processes and information provided during the review period is not the same as providing an ARFI response. The ARFI response is necessary to determine lease rates and characteristics such as building area.

[16]In conclusion, the criteria established by the Court of Appeal in *Boardwalk* are met. The City is not attempting to strictly apply the legislation to frustrate the taxpayer's right to file a complaint - the Complainant failed to make any effort to comply with the requirements of the legislation after having been given ample time, and multiple opportunities, to do so. The Complainant did not respond to the ARFI after multiple requests. Such cases routinely result in assessment complaints being dismissed. The City acknowledges that the Court of Appeal in *Boardwalk* set a high standard in order to show that an appeal should be barred by virtue of section 295(4); however, where there has been no communication, information or any other response at all from the assessed person in response to three written ARFI letters, *Boardwalk* and its extensive procedural burdens on the assessor ought not to be activated.

Position of the Respondent (Complainant)

[17]The Complainant had communications with the assessor for the property in March 2021 with respect to the assessment at that time. There was an email from the property owner to C. Green, the assessor for the property, on March 4, 2021 with information respecting a recent lease from June 2019 to May 2024, stating the size of the leased space, that it was a gross lease (with the landlord paying all utilities, property taxes and such), and that the annual rate averaged $9.50 per square foot over the term. The email further stated that in 2018 they had leased the majority of the building at $16.15 per square foot, and that if they were to renegotiate today, it would be significantly lower. The assessed value in 2018 was 11,442,100 while the assessment for 2021 was 10,848,500 - only a 5.2% reduction. Mr. Green replied on March 9, 2021 with an assessment change form reducing the assessment to 10,399,200, which was accepted.

[18]The Applicant sent the ARFI to the property owner the following month, and did not receive a response. The Complainant argued that the information requested had already been provided, and that it is not necessary to fill out the form. In any event, the leases are gross leases, which are not used in the income approach; therefore, the information would not have been useful to the Applicant.

[19]In *Boardwalk*, the Court of Appeal found that a complaint should not be dismissed outright as the Applicant requests, stating "allowing irrevocable unilateral assessments…is the largest possible penalty in a taxation statute." Section 295(4) does not operate automatically - unless an assessor

moves to dismiss a complaint under s. 295(4), the Assessment Review Board would simply hear the complaint on its merits. The penalty of dismissal can only apply if the complainant fails to provide information requested under s. 295(1), which allows an assessor to request only information that is necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations. The standard of necessity in s. 295(1) according to the Court in *Boardwalk* is that the information sought is "indispensable; not merely expedient, nor useful, nor convenient". When considering an application to dismiss a complaint pursuant to s. 295(4), the policy behind the provision must also be considered. The Court of Appeal in *Boardwalk* characterized section 295(4) as a penalty for failure to give information, and explained that "such penalties are not an end in themselves." Rather, such penalties are a means to an end: getting information.

[20]The assessor has a duty to be fair when invoking s. 295(4). As the Court of Appeal noted in *Boardwalk*, an assessor is a statutory officer with statutory powers and duties. As a result, assessors have a duty to be fair when exercising their statutory powers and making decisions that affect the rights, privileges or interests of taxpayers.

[21]The Complainant presented several decisions of the MGB and CARBs that found that outright dismissal of the complaint is not reasonable. The Complainant suggested that the Applicant is using s. 295 in order to reduce the number of complaints, rather than for its intended use as a tool for preparing the assessment.

[22]The City's application should be dismissed because the Complainant had already provided the assessor with the information sought; therefore, had already substantially complied with the assessor's request for information.

[23]The Applicant breached the duty of fairness. The assessor sent the requests for information and follow-up correspondence to the Complainants only via regular mail, despite the email communication that was taking place during that period of time. The March 4, 2021 email from the property owner had ended with "Please let me know if you require any further info".

[24]On November 10, 2021 the Complainant's agent sought to determine whether there were outstanding ARFIs. The assessor refused to provide this information, which would have facilitated the underlying purpose of section 295(4) to enable to the assessor to obtain the information it seeks. If the assessor viewed this information as indispensable to carrying out its duties and responsibilities, the assessor ought to have taken steps to obtain the information before moving to abrogate the Complainants' right to challenge the assessment of their property.

BOARD FINDINGS and DECISION

[25]The information provided in the March 4, 2021 email from the property owner to the assessor substantially satisfied the requirements of s. 295(1). There is no requirement in the legislation that a specific form must be filled out and returned. The application is denied and the complaint shall be set for a hearing on the merits.

REASONS

[26]The Complainant had provided the tenant information to the assessor, and they were gross leases with the rates and start dates specified. This was substantially the same information requested in

the ARFI and, being gross leases, were of limited use in determining the assessment. It is clear that the process during the Customer Review Period is not the same as providing information in response to an ARFI; however, it would be reasonable for a property owner to expect that the information would be passed on and to believe that it would be unnecessary to send the same information twice.

[27]Under the circumstances, while it is uncontested that there was no response to the ARFI, the Board finds that the information was provided, and the failure to specifically respond to the ARFI should not result in the taxpayer losing his statutory right to an assessment complaint.

[28]The Board finds that in this situation. it would be a disproportionately extreme penalty for the Complainant to lose the right of appeal, and the application is denied.

[29]Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 30th day of June, 2022.

On Behalf of: H. Kim
Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX

Documents presented at the Hearing and considered by the Board.

NO.	ITEM
1. 1	Hearing Materials provided by Clerk
2. A.1	Applicant submission two parts
3. A.2	Applicant legal brief
4. A.3	Applicant Book of Authorities
5. C.1	Respondent (Complainant) submission
6. C.2	Respondent (Complainant) legal appendix

As per paragraph 7:

This hearing was one of a number of hearings with respect to this application, which was made with respect to a number of complaints. The first application was heard in detail, with extensive legal argument from both the Applicant and the Respondent (Complainant). With the agreement of the parties, only the differentiating facts were presented in detail, and the legal argument carried forward for all of the applications. The full list of complaints is:

1. Complaint 0262 1568 Roll 30000540180
2. Complaint 0262 1569 Roll 30000540185
3. Complaint 0262 1570 Roll 30000540195
4. Complaint 0262 1585 Roll 30001130708
5. Complaint 0262 1645 Roll 30003110455
6. Complaint 0262 1646 Roll 30003110525
7. Complaint 0262 1658 Roll 30003111240
8. Complaint 0262 1676 Roll 30008800580
9. Complaint 0262 1678 Roll 30008800811