Complaint ID: 0262 1585
Roll Number: 30001130708

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

PRESIDING OFFICER: H. Kim

BETWEEN:

DP Shopping Centre Holding 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: 30001130708

MUNICIPAL ADDRESS: 69 Dunlop St

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 neighbourhood shopping centre assessed on the income approach.

ISSUE

[6] The only issue in this preliminary hearing is whether the complaints should be dismissed pursuant to s. 295(4) of the Act. In the subject proceeding, the specific issues are whether the information requested was necessary, pursuant to s. 295(1) of the *Act*, and whether the Applicant acted in accordance with the duty of fairness with respect to receipt of the request for information.

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. The ARFI consists of a cover letter explaining the request, citing section 295, along with a standardized form to be completed and returned, requesting current information relating to leases, physical characteristics of the property, income, and expenses. 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 Complainant 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 at the address on title. It is the assessed person's responsibility to ensure that the address for service listed on the certificate of title for a property is kept up to date. The *Act* requires assessed persons in a municipality to provide their address for service of notices to that municipality. If they do not, there are provisions in the *Act* that allow for deemed delivery of assessment and taxation notices. More generally, legislation that mandates the sending of a notice does not require that the notice actually be received. To the extent that a failure to update the title or inform the City of an address change resulted in the ARFI letters not being received, the Applicant referred to CARB decision 90342J-2015, which stated the Board does not have the discretion to take into consideration mitigating factors such as clerical oversight or past compliance when applying section 295(4).

[12]The ARFI letters were 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.

[13]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. The Complainant provided no information at all.

[14]With respect to item 8, the Applicant agrees that ARFIs submitted in previous years had listed the leases in place; however, in the 2021 post-COVID environment where the economy and society is in considerable flux, current income and expense information is necessary in order to ensure that the assessments are accurate. Property assessments must be prepared annually, and, for example, a change in operating costs has an impact when preparing the assessment using the income approach.

[15]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 15%

b) The Operating Cost/Vacant Space Shortfall Allowance should be no less than $15psf
c) The Non-Recoverable/Reserve for Replacement Allowance should be no less than a combined 6%
d) The Capitalization Rate should be no lower than 8%
e) The Grocery Store, at the subject should be no higher than $9psf
f) The Convenience Store, at the subject should be no higher than $24psf
g) The Financial Services, at the subject should be no higher than $19psf
h) The Fast Food CRU, at the subject should be no higher than $23psf
i) The Retail CRU 0-3,000sqft, at the subject should be no higher than $21psf
j) The Retail CRU 3,001-6,000sqft, at the subject should be no higher than $21psf

[16]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.

[17]While the Complainant may argue that the City could have obtained the information requested from other sources, there is nothing in the legislation to require the municipality to take such steps before the provisions of s. 295(4) are operative. The Complainant may argue that the City already had some of the requested information in its possession from previous ARFIs but this does not take away the assessor's right to request nor the owner's obligation to supply information.

[18]The Applicant argued against hindsight bias. The test is not whether, had the Complainant responded to the ARFI, the information would have changed anything, it is whether it was necessary at the time when the information was not available and unknown.

[19]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. This is not a case of partial or incomplete compliance - no response at all was provided. 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)

[20]The Complainant was unable to confirm whether or not it received the initial request for information or any of the follow-up letters purported to be sent by the assessor. The taxpayer has historically provided ARFI responses in a timely manner. From the information that the Applicant already has, there are minor changes to the property but not of a sufficient nature as to warrant a

dismissal of the appeal. Further, no assessment notice was received - the complaint was filed using information available online.

[21]The Complainant submitted the ARFI responses in 2017, 2018, 2019 and 2020 which were sent by email to the assessment department of the City by D. Carleton of Riverpark Properties Ltd. each year. The email and ARFI forms included his contact information. In 2020 there was an email exchange providing further information with respect to the nature of certain leases and rent abatements, as requested by J. Miller, the Deputy City Assessor.

[22]On May 13, 2022, in response to an email from the Complainant, Mr. Carleton replied:

> As we previously discussed, I am not sure if we received this or not. Our practice is to respond to all requests for information so I cannot imagine that we would not have provided the information. As I mentioned, I cannot locate anything in my sent items folder showing the response for 2021 (I did send you the information to the years prior to 2021).
>
> I would have provided a rent roll. Attached is the rent roll that I would have provided. In past years, if anyone from the assessment department has asked questions, I have answered. I had forwarded you examples of this from prior years.

[23]The rent roll attached to the email indicates small changes in the leases previously reported, and the space that was available for lease was listed by Salomon Commercial with the lease rate and operating costs clearly set out in the listing brochure. The Complainant argued that a substantial amount of the information requested was already in the possession of the Applicant, or readily available from other sources, and the ARFI response was not necessary to prepare the assessment.

[24]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.

[25]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.

[26]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.

[27]The City's application should be dismissed because the legal preconditions for dismissal set out in *Boardwalk* are not satisfied. The ARFI package stated the purpose for which the assessor was seeking information: the cover letter stated that the assessor was conducting market research and seeking the requested information to assist the assessor in monitoring the local real estate market. The assessor's duties and responsibilities under the *Act* Parts 9 to 12 and the regulations do not include carrying out market research and monitoring the local real estate market; therefore, the Complainant was not obligated to provide information to the assessor for this purpose. The assessor's request for information package also included an Annual Income & Expense Statement form. The bottom of these forms stated an additional purpose for which the assessor was requesting information: "Information will be used solely for the purpose of determining a fair and equitable assessed value of your property."

[28]While the Complainant agrees that preparing an assessment of their property is something the assessor has a duty and responsibility to do under Part 9 of the *Act*, the information requested was not indispensable to prepare an assessment of the subject properties. The Complainant had already provided the assessor with the information sought in prior years; therefore, had already substantially complied with the assessor's request for information.

[29]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 ongoing COVID-19 pandemic during which many people were working from home. The prior years' ARFI responses were sent by email from the property manager, whose contact information had been included in each of the previous years' ARFI responses.

[30]The email signatures show that the property manager's office was not the address to which the assessment notice was sent.

[31]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

[32]The information requested was already in the possession of the Applicant or readily available through the listing for lease. The ARFI response was not necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations. Further, it is clear the ARFI and the Assessment notices were likely sent to an address that was not the current address, and the ARFI was not received. The application is denied and the complaint shall be set for a hearing on the merits.

REASONS

[33]The Applicant was already in possession of the information requested from the ARFI responses that had been provided for the four prior years, and they clearly showed that the majority of the leases did not expire until after the date of the ARFI in 2021. The Board does not agree that it would be hindsight bias to find that the information would not have been of use to the assessor – it was information that he already had in his possession. The listing brochure clearly shows the lease rate and operating costs of the space that did change, and this information would have been available to the Applicant. Under the circumstances, while it is uncontested that there was no ARFI response at all, the Board finds that the information was not necessary and the failure to respond should not result in the taxpayer losing his statutory right to an assessment complaint.

[34]Further, in this case, the Board finds that the taxpayer likely did not receive the ARFI request. The same person responded to the 2017, 2018, 2019 and 2020 ARFI requests, and the signature line shows the mailing address changed in 2019, and again in 2020. The ARFI letters were sent to the 2019 address. While the Board agrees that a property owner has an obligation to keep their address updated, the provisions of s. 304(3) of the Act refers to tax notices under Part 10, not to the address for ARFIs in Part 9. While the *Act* does not require that the Applicant demonstrate that the ARFI was actually received, it would be unfair to remove the Complainant's statutory right to file a complaint due to a failure to update the address on title, particularly when the Applicant had been in contact the previous year by email.

[35]The Board agrees that under the circumstances, it would be a disproportionately extreme penalty for the Complainant to lose his right of appeal and the application is denied.

[36]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 in 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