

# Central Alberta

Regional Assessment Review Board

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## Decision of Preliminary Hearing – June 24, 2010 Colliers International Realty Advisors Inc. and City of Red Deer

July 22, 2010

Colliers International Realty Advisors Inc  
1000, 335 8<sup>th</sup> Avenue SW  
Calgary, AB  
T2P 1C9

Solicitor: Wilson Laycraft Barrister & Solicitors  
Via email: [calgary.tax@colliers.com](mailto:calgary.tax@colliers.com)  
Paper copy to follow

City of Red Deer Assessment  
c/o 4926-50 Avenue  
Red Deer, AB

Solicitor: Reynolds Mirth Richards & Farmer LLP  
Via email: [assessment@reddeer.ca](mailto:assessment@reddeer.ca)  
Paper copy to follow

### NOTICE OF DECISION

**This is a decision of the Central Alberta Regional Composite Assessment Review Board (CARCARB) from a hearing held at Council Chamber, 2<sup>nd</sup> Floor, City Hall, on Thursday, June 24, 2010 to determine the validity of seven assessment complaints.**

The Municipal Government Act provides the right for you to appeal this decision to the Court of Queens Bench on a question of law or jurisdiction of the Board within 30 days of receiving this letter.

#### **MOTION:**

Moved by Tricia Willis, seconded by David Thomas:

Upon hearing all of the parties who wished to speak both in favour and against the appeal and upon reviewing all of the written materials submitted to the Board for its consideration, The Central Alberta Regional Composite Assessment Review Board hereby decides as follows:

**RESOLVED** that on Section 4 of the Complaint form listing ten matters as reasons for appeal, seven were selected on each one of the complainant forms before the Board.

The seven selected matters were:

1. the description of the property or business
2. the name or mailing address of an assessed person or taxpayer
3. and assessment amount
4. an assessment class
5. an assessment sub-class
6. the type of property
7. the type of improvement

The Board finds that only matter three, being an assessment amount is valid for all seven complaints. The Board deems that the remaining six matters contain no meaningful information

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as such, these six complaint matters do, indeed, fail to meet the requirements of Section 460(7) and are dismissed.

The roll numbers as listed below may be set for hearing related to matter 3 only.

ROLL	OWNER	ADDRESS	COMMON NAME	Decision
1130705	Hreit Holdings 48 Corporation	69 Dunlop Street	Deer Park Co Op	Set for Hearing
2822775	McDonald's Restaurants of Canada Ltd.	7149 50 Avenue	McDonald's North	Set for Hearing
1711595	McDonald's Restaurants of Canada Ltd.	4840 52 Avenue	McDonald's Downtown	Set for Hearing
540060	McDonald's Restaurants of Canada Ltd.	2502 50 Avenue	McDonald's South	Set for Hearing
3012295	Taylor Plaza Ltd.	6730 Taylor Drive	Taylor Plaza	Set for Hearing
3012300	Taylor Plaza Ltd.	6730 Taylor Drive	Taylor Plaza	Set for Hearing
430785	2792800 Canada Limited	2235 50 Avenue	Value Village	Set for Hearing

CARRIED

DISSENTING VOTE: Jeffrey Dawson

*Reason listed as per section 468(1) of the Municipal Government Act:*

**468(1)** Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons.

I find that on all seven matters on Section 4 of the Complaint form the Complainant did not meet the requirements of the Legislation as set out in the Municipal Government Act in Section 460(7)(C) "indicate what the correct information is, and" therefore are dismissed.

## APPEARANCES:

City of Red Deer (*Applicant*)  
 Carol Zukiwski (*Solicitor*)  
 Nayha Acharya (*Solicitor*)

Colliers International (*Agent*)  
 Brian Dell (*Solicitor*)  
 Mike Uhryn (*Agent*)

## Before:

David Thomas - *Presiding Officer*  
 Jeffrey Dawson - *Panel Member*  
 Tricia Willis - *Panel Member*

## BACKGROUND:

Complaints were filed on 15 March, 2010 by Colliers International Realty Advisors Inc. on behalf of the following owners and properties:

ROLL	OWNER	ADDRESS	COMMON NAME
1130705	Hreit Holdings 48 Corporation	69 Dunlop Street	Deer Park Co Op
2822775	McDonald's Restaurants of Canada Ltd.	7149 50 Avenue	McDonald's North
1711595	McDonald's Restaurants of Canada Ltd.	4840 52 Avenue	McDonald's Downtown

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540060	McDonald's Restaurants of Canada Ltd.	2502 50 Avenue	McDonald's South
3012295	Taylor Plaza Ltd.	6730 Taylor Drive	Taylor Plaza
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On 29 March, 2010 the Respondent filed an application for a preliminary hearing on the grounds that the complaint does not comply with the requirements of section 460(7) of the Municipal Government Act.

The parties agreed and complied with a revised disclosure schedule. Materials provided to the Board:

Application for Preliminary Hearing & Consent to Revised Disclosure..... Package 'A'  
Respondent Argument filed 10 June 2010..... Package 'B'  
Respondent Disclosure filed 10 June 2010 .....Package 'C'  
Respondent Report from the Assessor filed 10 June 2010..... Package 'D'  
Complainant Disclosure filed 17 June 2010 .....Package 'E'

Colliers, as agent, prepared and filed seven complaints as listed above. Each complaint presented identical seven matters as being under complaint. Each complaint form had appended nearly identical fifteen reasons or issues as a rationale for the complaint in Section 5 of the complaint form.

## ISSUE:

Are these complaints compliant with the requirements of Section 460(7) of the Municipal Government Act (MGA) and with Section 1 and Section 2 of the Matters Related to Assessment and Complaints Regulations (MRAC)?

## POSITION OF THE CITY OF RED DEER:

The City seeks the dismissal of these seven complaints as non-compliant with Section 460(7) Act and Sections 1 and 2 MRAC. In the event the Board rejects outright dismissal, the City seeks an order directing the complainant to give some clarification of the complaint issues that will be pursued in a future merit hearing.

The City firstly notes that while the complaint identified seven matters as the basis for the complaint, it is only on the third matter raised – the assessment value – that any of the fifteen reasons or issues of the complaint have any bearing. In other words, no identification of wrong information or correcting information is given for the remaining six complaint matters. As this is a breach of Section 460(7) (Act) and Sections 1 and 2 MRAC, these six matters should be simply dismissed as non-compliant.

For the remaining complaint matter – the assessment value – the complainant appears to have created a shopping list of any potential assessment issues that could affect any property; but rather than specifying those applying to a particular complaint, Colliers has included them all for every complaint.

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Indeed, a nearly identical listing of issues was used by this agent in Calgary and that appears to be the source of these issues for these complaints. Indeed, it can be seen that several issues have been corrected manually from reference to Calgary. This, the City says, is beyond the wording and intent of the new legislation, which seeks better disclosure and identification of the issues in context, not obscuring them in a cloud of issues, many of which seem to have no relevance.

This may suit the agent's needs. It requires no real examination of the assessment and actual triable issues before filing the complaint. However, the legislative intent, as can be seen from the nature of the new legislation and from records of Hansard and publication by the provincial government, speaks to an extended complaint deadline and better specified disclosure requirements leading to a winnowing of complaints to only those specific triable issues going to a hearing. To do so requires accountability by the complainant to the issues he or she may raise.

This listing of issues only makes clear that the agent doesn't know what is going to hearing and provides only uncertainty to the City.

Past orders of the MGB have spoken of the complaint information as being the first level of disclosure, allowing the City some idea of what may be coming to hearing. Clearly, further disclosure incorporating the full evidence and argument is required to give the City a full understanding of the complainant's case, but that doesn't mean the City is to be kept in ignorance as to the nature of the complaint issues until full disclosure is made.

The result of this description of triable issues either requires the City to prepare needlessly against issues later dropped or to do nothing until complete disclosure is made. The Act doesn't intend either of these results.

Colliers made no request for information until May 11, 2010, which was long after the issuance of these assessments. This supports the City's assertion that the complainant made no real inquiry into appeal issues.

The City states court practice, which frequently sees a plethora of issues pled at the outset and later abandoned, leaving only a few for hearing, is irrelevant. Assessment is an annual event, not an occasional event such as a court pleading, and is required to be completed within set deadlines, unlike the general discretion left to the judiciary.

The new legislation seeks better efficiency and accountability of all parties. To date, the actions of the agent on these complaints undermine both goals.

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The requested assessment amount -- a blanket 25% of the actual assessment -- is not a number that can be given any credibility. It is not a numerical range that any merit hearing could consider. Nor could it be considered helpful to the agent and assessor considering each assessment with a view to resolving any issues without hearing. This value serves only to underscore that the agent has made no effort to review each assessment and the components of its assessment but has selected only a meaningless number to fill the form and avoid entirely the agent's obligations in completing these complaints.

The City acknowledges that a CARB decision was issued by a CARB panel from the City of Calgary (ARB J0009/2010 – P). This decision, also involving Colliers and a shopping list or "boiler plate" listing of appeal issues, involved issues that are largely identical to those presented here. In that case, the CARB panel found that the compliance was only marginal, but was given the benefit of the doubt, as this was the inaugural year of the new legislation.

The City argues that this Board is not bound to precedent and is free to determine that non-compliance exists here and to dismiss the complaint.

However, if this Board feels its decision should proceed as in the Calgary Colliers case, this agent should at least be required to give immediately some better definition of those issues it intends to take to hearing, rather than wait until full evidentiary disclosure. An order like this would put the agent more in line with complaint filing disclosure as intended by the legislation.

## **POSITION OF COLLIERS INTERNATIONAL REALTY ADVISORS:**

The agent states that even if some fault could be found with the completion of the complaint forms, there has been a substantial compliance by the agent of a near perfect sort. Colliers asserts the taxpayers have clearly exercised their right of appeal and that absolutely no prejudice has been suffered by the City from their wording of issues in filing these complaints.

Colliers states the City is holding the taxpayer to an exacting standard in filing the form and confuses the issues in appeal with the evidence in support of them.

Even if some complaint matters (issues) are abandoned in that no evidence is forthcoming on them, the complaint form essentially requires only one issue to proceed validly to hearing.

Colliers notes that if there is some doubt about the complaint and the City needs to know about it before the complainant disclosure date, then, as noted in the Boardwalk case (Tab 7 Package E), the assessor can also telephone for any necessary clarification.

For the subject complaints for the 2009 complaint period, three properties were reduced at hearing and four were confirmed. Six of the 2009 properties are before the Board for the 2010 complaint year. The 2009 complaints were only finished in May 2010, which explains in part some generality in looking to triable issues for this year.

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Further, the Board should be aware there are considerable time constraints placed upon complainants and agents in preparing a complaint.

An agent is required to complete a stipulated agency agreement every year. By the time a client decides to appeal, he or she must secure an agent and sign the correct form. Then the agent must attempt to pursue information that requires a separate set of authorization forms from an owner before a request can be advanced. Not infrequently, the result is that there has not been time for the necessary review of data to give great precision to any triable issues. Clearly, in these circumstances, the agent must file in a manner to protect the interests of his or her client.

The commonality of the issues among many properties is of no consequence. It is very common for many appeals, often heard together, to proceed on their common issues.

The agent also notes that there is no legislated requirement that a complainant file a request for information prior to filing a complaint; hence it cannot be inferred as a necessary preamble to the filing of a complaint.

The assessor is only required to know the case to be met with the filing of the complainant's disclosure, not before. Further, the timing of the length of the merit hearing can only be set after disclosure. No prejudice to the City exists when these are met.

The agent believes Colliers falls within the reasoning of the Wascana case from Saskatchewan (Tab 10 Package E) in that there has been a very substantial compliance with the requirements of the legislation.

Further, the directions given in the Boardwalk case (Ct App Alberta – Tab 7 Package E) are applicable here. Appeal rights are not to be denied on a technicality. Also, in taxing legislation, where there are any doubts about legislative interpretations, they should be resolved in favour of the taxpayer.

Finally, while the new legislation is argued to pursue greater efficiency and accountability, even the publication advanced by the City notes that fairness remains a principle objective and fairness requires this matter proceed to a merit hearing.

## **DECISION:**

Seven matters were listed in Section 4 of the Assessment Review Board Complaint form however, six of the seven matters listed contain no meaningful information as such, these six complaint matters do, indeed, fail to meet the requirements of Section 460(7) and are dismissed.

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The Board finds that matter three, being an assessment amount is valid for all seven complaints and all roll numbers as listed below may be set for hearing.

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## REASONS:

It was noted by the parties that a substantially similar complaint validity hearing, also involving Colliers, was heard in Calgary resulting in ARB J0009/2010-P.

CARB is not bound to precedent and, on the evidence and arguments advanced, is free to look more closely at the intent of the new legislation. However, this CARB finds that the rationale given for the decision above closely aligns with the facts in these complaints and results in a similar decision with the further reasons appended here.

The CARB notes that in the complaint form, Section 5 is essentially the complainant's subjective articulation of why the assessment is wrong or unfair and a very subjective request as to what it should be.

These CARB complaint validity hearings are then in the position of having to objectively determine some standard, whether called substantial compliance or otherwise, to measure the complainant's subjective initial rationale as to why Colliers seeks a Board hearing.

It should be remembered that this determination is being made at a hearing where no evidence is before the CARB respecting valuation for the properties in question. Hence, there is no way to measure objectively if the alleged issue is meaningful.

It should as well be noted that given the comments of Justice Cote from the Boardwalk case, there can be only one standard of compliance. It is not adjusted to experience of the complainant.

The new legislation may be said to encourage earlier and more detailed consideration of a complaint prior to its filing, yet it is not a requirement that the complainant must seek disclosure or must contact the assessor prior to filing a complaint.

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The CARB also notes the complainant's comments that the new requirements in agency and disclosure have made the extra 30 days for filing a complaint from prior year's legislation much less than that in practice.

MRAC Section 9 states a CARB can hear no evidence on an issue not raised in the complaint form. This would appear to be a caution to complainants to ensure if any doubt all bases should be covered in the complaint.

Bearing these matters in mind, what sort of universal objectives test can there be to a compliance with Section 5 MRAC complaint form?

This CARB finds it to be that at least one triable issue related to value is articulated in the complaint form.

The CARB, in this hearing on the validity of the complaint, has no evidence as to value and has no basis upon which to determine if the complainant's issues are real; that is for the merit hearing to determine.

Again, without any valuation evidence before it, the CARB's review of the requested assessment cannot, but by speculation, find it to be silly or sound. As long as there is a requested value, different from the assessed value, that part of the complaint is in compliance.

The CARB acknowledges that the universal issue list, while convenient and cost effective for tax agents, may stifle the wishes of the government and of municipalities to expedite the hearing process. However, the test for compliance must be the same for all and use of dismissal must be weighted carefully and fairly in this single tier appeal system.

This is not to say that the municipalities are without redress if tax agents or complainants do not assume their obligations to the appeal system.

The legislature in a departure from prior practice before with the MGB, has inserted the right of the CARB, on application by a party or even on its own initiative, to assess costs in Section 52 (MRAC).

If in the context of the merit hearing or following it, it can be established that the agent has abused the appeal process or their pattern of behaviour, hindered settlement and led to significant late withdrawals that resulted in a wastage of City or Board time or resources, costs should be applied as a sanction for that behaviour. This is a tool the courts have long applied to secure appropriate behaviour and hopefully it can be so here.

July 23/10  
Date

Tricia Willis  
Tricia Willis for David Thomas - Presiding Officer  
Central Alberta Regional Assessment Review Board