

**TOWN OF DRAYTON VALLEY
ASSESSMENT REVIEW BOARD**

IN THE JURISDICTIONAL MATTER OF A COMPLAINT filed with the Town of Drayton Valley 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:

Town of Drayton Valley – Applicant

- and -

695099 Alberta Ltd. – Respondent

Before:

P. Irwin, Presiding Officer

This is the decision of a single member panel of the Town of Drayton Valley Composite Assessment Review Board (CARB) from a hearing held at the Town of Drayton Valley Civic Centre Council Chambers on Monday, September 12, 2011 to determine the validity of two assessment complaints.

These are complaints to the Town of Drayton Valley Assessment Review Board in respect of Property Assessments prepared by the Assessor of the Town of Drayton Valley and entered into the 2011 Assessment Roll as follows:

ROLL NUMBERS	LEGAL DESCRIPTIONS	CIVIC ADDRESSES	ASSESSMENTS
36112200	301TR;31;8	4912 – 56 ST.	\$379,070
35301200	9223390;85;2	5709 – 49 AV.	\$1,341,060

PART A: BACKGROUND

Parts of the Municipal Government Act dealing with property assessment and the assessment complaint process were revised, and the new provisions came into force January 1, 2010. As well, the Assessment Complaints and Appeals Regulation, AR 238/00 (ACAR) was replaced by a new and larger regulation, the Matters Relating to Assessment and Taxation Regulation, AR 310/09 (MRAC). MRAC introduced a standard Complaint form at Schedule 1 for use province-wide. Previously, each municipality devised its own Complaint form.

The property assessment complaint/appeal process has been streamlined to a single ARB hearing with the right to appeal to Court of Queen's Bench on matters of law or jurisdiction. The deadline for filing a complaint was expanded to 60 days from 30 days, as were timelines for disclosure of evidence prior to a hearing. Sections 299 and 300 of the Act were expanded, regarding an assessed person's right to receive "sufficient information" to show how assessments were prepared. The Complaint form is a thorough document requiring the identification of matters under complaint (the same as identified at s 460 (5) of the *Act*) and detailing information the complainant must supply, again as identified at s 460 (7), but further requiring "identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues".

The Town of Drayton Valley is Applicant at this preliminary jurisdictional hearing involving 2 cases. The Applicant requests the CARB to find these 2 complaints not valid by reason of deficiency.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

This hearing was scheduled to be heard at 2:00 p.m. As the Complainant was not present at 2:00 p.m., the Board delayed the commencement for 10 minutes. The Clerk submitted that a Notice of Preliminary Hearing was faxed and mailed to the Complainant on August 23, 2011. The fax activity report confirmed that it had gone through. The mailed notice was not returned. There has been no communication from the Complainant. No request for a postponement or adjournment has been received. Therefore, the hearing commenced at 2:10 p.m., in accordance with the *Municipal Government Act*, section 463 ("Absence from hearing"), which reads as follows:

463 If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

- (a) all persons required to be notified were given notice of the hearing, and
- (b) no request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board.

RSA 2000 cM-26 s463;2009 c29 s23

The Clerk of the CARB read the particulars of the Complaints into the record.

There were no objections to the composition of the Board nor were there any objections to the Board's jurisdiction to hear the Preliminary Matter.

PART C: ISSUES/MATTERS:

The CARB derives its authority to make decisions under Part 11 of the Act. During the course of the hearing, the Applicant raised the following jurisdictional issue, which is addressed below:

Issue: Incomplete Form: Should a complaint be found invalid and consequently dismissed where the complaint form has not been entirely or imperfectly filled out?

Positions of the Parties

The Applicant found fault with how the complaint form (MRAC Schedule 1) had been filled out, notably in Section 5 - Reason(s) for Complaint. The Applicant submitted that the Complainant failed to explain how the assessed information was incorrect and failed to indicate what the correct information was. He noted that in Section 4 of the Complaint form, Box 3 ("an assessment amount") had a check mark; however, there was no response to the question: "If information was requested from the municipality pursuant to section 299 or 300 of the *Municipal Government Act*, was the information provided?" Neither the "yes" box nor the "no" box was checked.

The Applicant submitted that the Town of Drayton Valley holds an Open House in the Town Office each year during the allowable period of time to lodge an assessment complaint. The Complainant did attend that session to discuss another property. The Complainant had an opportunity to discuss the assessments on his properties at that session, but did not do so. After the Complainant's complaints were received, the Applicant phoned him and asked what was wrong with the assessments, to which the Complainant responded that they were too high.

The Applicant submits that the complaints should be dismissed because they do not meet the requirements of the *Municipal Government Act*, section 460 (Complaints), and the Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation (MRAC). The applicable sections are reproduced below:

MGA, section 460: Complaints

- (1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.
- (2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.
- (3) A complaint may be made only by an assessed person or a taxpayer.
- (4) A complaint may relate to any assessed property or business.
- (5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:
 - (a) the description of a property or business;
 - (b) the name and mailing address of an assessed person or taxpayer;
 - (c) an assessment;
 - (d) an assessment class;
 - (e) an assessment sub-class;
 - (f) the type of property;
 - (g) the type of improvement;
 - (h) school support;
 - (i) whether the property is assessable;
 - (j) whether the property or business is exempt from taxation under Part 10.
- (6) There is no right to make a complaint about any tax rate.
- (7) A complainant must
 - (a) indicate what information shown on an assessment notice or tax notice is incorrect,

- (b) explain in what respect that information is incorrect,
- ~~(c) indicate what the correct information is, and~~
- (d) identify the requested assessed value, if the complaint relates to an assessment.

MRAC, section 2: Documents to be filed by complainant:

- 2(1)** If a complaint is to be heard by an assessment review board, the complainant must
- (a) complete and file with the clerk a complaint in the form set out in Schedule 1, and
 - (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.
- (2)** If a complainant does not comply with subsection (1),
- (a) the complaint is invalid, and
 - (b) the assessment review board must dismiss the complaint.

The position of the Complainant with respect to this preliminary matter is unknown as he did not appear at the hearing, nor did he submit any written material for the CARB's consideration.

PART D: DECISION AND REASONS

The CARB finds that the Applicant has properly noted that section 5 of the Complaint form has gaps in information, notably that it is missing an explanation with respect to the information that is incorrect, it is missing an indication of what the correct information is, and it failed to include a statement about any discussion(s) about the complaints, or absence of discussion(s).

While the CARB finds this silence on these matters to be regrettable, the CARB finds that these transgressions are not fatal. The Respondent is left to conclude that the requested assessment values are indeed the correct values, without accompanying words to that affect.

The complaints have otherwise been filed in compliance with the legislation, which must be interpreted in a fair, broad and liberal manner.

To the extent that the ARB requires further information from the Complainant, natural justice and procedural fairness requires the ARB to grant the Complainant reasonable opportunity to provide such further information. To accede to the Applicant's request that these complaints be found invalid would be a triumph of form over substance: gaps in information provided are no bar to an appeal.

The CARB finds the complaint forms to have been filed in sufficient detail for the assessor to appreciate the matters at issue and anticipate the case to be met. Significantly, Section 4 of the complaint form identifies the matter of the assessment amount to be the source of the complaint. In the opinion of the CARB, the intent of the complaint is clear. As well, if there is any confusion or uncertainty, one would expect greater clarity with the production of the complainant's evidence a full 6 weeks prior to the actual hearing. Where shortcomings exist in the form, they are insufficient to conclude that the right of complaint should be lost.

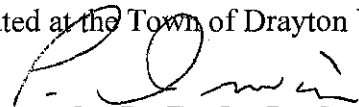
~~The Applicant's point that discussion may well resolve issues is appreciated. The CARB encourages the parties to observe the spirit and letter of the law, but to find that the lack of contact statement constitutes an incomplete form would seem a disproportionate penalty for a small sin.~~

This CARB concludes that substantial compliance is sufficient compliance. While no case law was presented, this CARB is aware of a number of cases that have dealt with the matter of sufficiency since the new legislation was enacted and is satisfied that this decision is consistent with the outcome of those cases. Here, the complaints have met the s 460(7) requirements and whatever shortcomings might exist, they are not sufficient in the opinion of the CARB to derail the assessment complaint process.

The complaints may proceed to merit hearings.

It is so ordered.

Dated at the Town of Drayton Valley, in the Province of Alberta, this 11th day of October, 2011.


P. Irwin, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
1.	Exhibit A1 – Town of Drayton Valley Submission, including legislation excerpts
2.	Exhibit A2 – Town of Drayton Valley Letter to Complainant re: Preliminary Hearing
3.	Exhibit A3 – Town of Drayton Valley Fax Activity Management Report
4.	Exhibit C1 – Complaint form: 4912 – 56 Street, Drayton Valley
5.	Exhibit C2 – Complaint form: 5709 – 49 Avenue, Drayton Valley

APPENDIX "B"

PERSON APPEARING CAPACITY

1. Alan L. McNaughton – Assessor, Town of Drayton Valley

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.