

**NOTICE OF DECISION      NO. 0098 57/12**

1248719 Alberta Ltd.  
13478 - 101 Street NW  
Edmonton, AB T5E 4G4

The City of Edmonton  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (Board) from a preliminary hearing held on July 5, 2012 respecting appeals on the 2012 Annual New Realty Assessments for the following rolls:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
1275346	11928 127 Avenue NW	Plan: 2008CL Lot: 2 Plan: 2008CL Lot: 3 Plan: 2008CL Lot: 4 Plan: 2008CL Lot: 5	\$1,205,500	Annual New	2012

**Before:**

Robert Mowbrey, Presiding Officer

**Board Officer:** Jodi Keil

**Persons Appearing on behalf of Complainant:**

None

**Persons Appearing on behalf of Respondent:**

Pam Woodward, City of Edmonton, Assessor  
Sarah Hughes, City of Edmonton, Student-at-Law  
Tanya Smith, City of Edmonton, Legal Counsel

## **PRELIMINARY AND PROCEDURAL MATTERS**

[1] Upon questioning by the Presiding Officer, the parties present indicated they had no objection to the composition of the Board.

[2] In addition, the Board member stated there was no bias with this file.

[3] There was agreement that evidence, testimony, argument and summation would apply to file #1275346 and would be carried forward to file #1280627, since the evidence was similar.

## **ISSUE**

[4] The Board considered the following issues:

1. Did the Complainant file the complaint by the deadline?
2. Was the complaint invalidated because the Complaint Form was not properly filled out and the fee was not paid?

## **POSITION OF THE COMPLAINANT**

[5] The Complainant did not attend the hearing. However, the Presiding Officer allowed the Complainant's notice of appeal to be entered into evidence as the complaint form titled Exhibit C-1.

## **POSITION OF THE RESPONDENT**

### **Issue 1. Did the Complainant file the complaint by the deadline?**

[6] The Respondent provided the Board with an information package in defense of its position. (Exhibit R-1, 14 pages). The Respondent advised the Board of the steps taken to advise the Complainant the deadline for Complainant appeals. The Respondent advised the Board that the deadline for complaint appeals was March 12<sup>th</sup>, 2012 and this was clearly pointed out under the 2012 annual realty assessment notice. (Exhibit R-1, page 1).

[7] In addition, the Respondent stated that reminder print notices were published in the Edmonton Sun, Edmonton Journal, and Edmonton Examiner. In addition, an online advertisement was published on the City of Edmonton's web page. (Exhibit R- 1, pages 13-17).

[8] The Respondent advised the Board that the complaint form stated "complainants with an incomplete complaint form, complaints submitted after the filing deadline, or complainants without the required filing fee, are invalid. (Exhibit R-1, page 4).

[9] The Respondent provided the Board with a legislation package that defended its position that the complaint appeal was late and therefore the appeal should not proceed to a merit hearing. (Exhibit R-2, 51 pages).

[10] The Respondent referred to the *Municipal Government Act*, R.S.A. 2000, c. M-26 s.309(1)(c) [MGA] which states that an assessment notice must show "*the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person.*" (Exhibit R-2, page 2).

[11] Regarding the publication of notice, the Respondent referred to the MGA, s.311(1) which states “*Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.*” Further, s.311(2) states “*All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.*”

[12] The Respondent emphasized that both direct and deemed notice had been sent to the Complainant.

[13] The Respondent referred to the *Interpretation Act*, R.S.A. 2000, c. I-8, regarding the computation of time. S.22(3) states “*If an enactment contains a reference to a number of days expressed to be clear days or to “at least “or “not less than” number of days between two events, in calculating the number of days, the days on which the events happen shall not be excluded.*” In addition, the Respondent further referred to s. 23(1)(a) of the *Interpretation Act* regarding the presumption of service: “*7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta... (b) Subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada.*”

[14] The Respondent emphasized that therefore, 67 days is allowed for the Complainant to lodge an appeal.

[15] The Respondent advised the Board regarding the address to which a complaint is sent in the MGA. S.461(1) states “*A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on the notice.*”

[16] The Respondent advised the Board that an assessment review board must dismiss a complaint that was not made within the proper time or does not comply with section 460(7) of the MGA.

[17] The Respondent also provided the Board with case law regarding the filing of late complaints. (Exhibit R-3, 32 pages.)

- *Chew-Cana Investment & Trading Corp. v. Edmonton (City)*, MGB Board Order: MGB 073/05, at para. 26, which states,

The MGB does not have jurisdiction to extend the time period for filing complaints. Section 309(1)(c) of the Act is a mandatory provision, which indicates that the complaint must be filed by the date shown on the assessment notice. As well, section 461(1) further indicates that the complaint must be filed not later than the date shown on the assessment notice. The MGB has no authority in the Act to change the “must” to a “may” and thus extend the time to file.

- *Edmonton (City) v. Milite*, MGB Letter Decision: DL 010/02, at para. 5, which states,

The MGB concluded that the ARB erred in accepting the complaint and, therefore, did not have the jurisdiction to reduce the assessment. While the Respondent believed that an injustice results if the ARB and the MGB do not extend the time for filing of a complaint, where the period established by the assessment notice for the filing of a complaint has been effected in accordance with the Act, the MGB has no jurisdiction to extend such filing deadlines. The Act imposes deadlines for the filing of complaints (and other steps in the process of assessment and appeals there from) to ensure that there is certainty and finality to the process. Although the MGB appreciates and shares the ARB’s sympathy in relation to the circumstances surrounding the late filing, there is no dispute that the notice was received and that the complaint was filed beyond the period

established by the Act. Neither the ARB nor the MGB has any authority to extend the deadline. Section 461(1) of the Municipal Government Act states “A complaint must be filed with the designated officer at the address shown on the assessment tax notice, not later than the date shown on that notice.”

- *Air Spray (1967) Ltd. v. Red Deer (County)*, MGB Board Order: MGB 001/06, at para. 26, which states,

While the MGB has the jurisdiction to extend the time for filing late issue statements, the MGB does not have the jurisdiction to extend the time for filing complaints. Section 309(1)(c) of the Act is a mandatory provision, which indicates that the complaint must be filed by the date shown on the assessment notice. As well, section 461(1) further indicates that the complaint must not be filed not later than the date shown on the assessment notice. The MGB has no authority in the Act to change the “must” to a “may” and thus extend the time to file.

- *Edmonton (City) v. Assessment Review Board of the City of Edmonton*, 2012 ABQB 399 [Wood]. Relevant sections of this decision were pointed out to the Board:

[62] Under AR 310/2009 [MRAC], provision is made for abridgment or expansion of various deadlines. The time limit for filing complaints is not included in any of those provisions (ss. 6, 10, 35, 41).

[65] I find that nothing in the legislative regime militates in favour of discretion on the part of the ARB to grant the extension which it granted in this case.

[70] The ARB urged the Court to apply a test of “substantial compliance” as applied in *Edmonton (City) v Edmonton Composite Assessment Review Board*, 2012 ABQB 154, [2012] AJ No 224 [Colliers] regarding sufficiency of the contents of complaints.

[71] Unlike the circumstances in the line of cases which Colliers follows, however, in the present case there was only one way to comply with the time requirement for filing-it must have been received for that purpose by the prescribed date.

[77] The ARB did not expressly consider the fact that Wood, latterly faced with a tight deadline, might have delivered the complaint by way of courier, personal delivery or electronic filing. He also might have mailed it by way of priority post, Xpresspost or registered mail. All of these means of delivery would have provided him with more control by guaranteeing delivery within a certain time and enabling him to obtain delivery confirmation.

[78] There was no evidence to the effect that Wood was precluded for any reason from delivering the complaint by one or more of these alternatives means so as to ensure compliance with the instructions in the Notice. In the end, he chose a means of delivery which was not only uncertain in terms of timing, but also left him no documentation to support his argument that Canada Post could not possibly have taken 12 days to deliver the complaint.

[79] I find that the ARB’s conclusion was unreasonable. The ARB is required by the MGA to dismiss out of time complaints. The ARB concluded that a denial of natural justice would result from applying the statutory deadline to Wood’s

complaint. Wood had 69 days prior to the deadline. Even assuming the ARB might extend a deadline for reasons of natural justice in very exceptional cases, it unreasonably concluded that the circumstances in this case were beyond Wood's control so to provide the ARB with discretion not to dismiss the complaint.

[80] Regrettably, the ARB decision here does not explain how it reached the conclusion that it was empowered to exercise a discretion in these circumstances. The Court is required supplement the decision in assessing sufficiency of reasons and I recognize the sympathetic concerns which may have led to the ARB's decision. However, I am unable to fashion reasons that can withstand scrutiny so as to place the ARB's interpretation within a range of possible outcomes. There is simply no support in the legislation, case law or facts which would assist or rationalize the conclusion reached by the ARB in conflict with prior decisions on this point.

[18] During the argument and summation, the Respondent advised the Board that the Complainant was so advised of the deadline. In addition, the ARB, the MGB and the Queen's Bench decisions all support the Respondent's position.

Issue 2. Was the complaint invalidated because the Complaint Form was not properly filled out and the fee was not paid?

[19] The Respondent advised the Board that the Complainant failed to submit the complaint with the required form and failed to submit the required fee. The Respondent noted the Board should therefore dismiss the complaint as the filing fee was missing and the required form was not utilized.

[20] The Respondent also cited a number of case laws regarding the form and filing fee.

- *Presley v. Edmonton (City)*, MGB Board Order: MGB 020/06. Relevant excerpts are as follows:

[35] The MGB finds section 460(2) of the Act to be clear and unequivocal in that the filing fee must be paid and must accompany the complaint form. In addition, section 461(1) of the Act specifies that a complaint must be filed by the date shown on the Assessment Notice. A plain reading of the relevant sections results in a finding that the fee must be submitted at the same time as the complaint form, and prior to the legislated deadline, in order for a complaint to be validly filed. While the issue of whether or not one Complaint Form may be filed for multiple properties was not argued before the MGB, there was no dispute among the parties that the Appellant only filed one \$30 fee for two property assessment complaints prior to the deadline of June 30, 2005. Section 467(1) of the Act gives the ARB (and there, the MGB) clear authority to dismiss a complaint that is not filed on time.

[37] A careful reading of ACAR also results in a similar conclusion. Section 3(1)(a) and (b) mandate that the complaint be filed in accordance with the Act and that payment of the complaint fee be made at the time the complaint is filed. Section 3(4) provides that the complaint is invalid if it does not comply with the requirements of section 3(1) and the ARB must not hear the matter.

[40] A complaint is not validly filed until the relevant statutory requirements are satisfied, which includes the submission of a Complaint Form, accompanied by a filing fee. These requirements must be complied with by the deadline for the filing of the complaint. If the filing fee is tendered after the due date, as was the case at hand, then the complaint, although valid in form and content, is

nevertheless out of time. Pursuant to the Act, ACAR and many decisions of the MGB, there is no authority for an extension to be given to the filing deadline. The result is that the Appellant has lost his right of appeal, based on his own inaction, by not meeting the mandatory requirements of the Act within the specified time.

- *711272 Alberta Ltd. v. Leduc (City)*, MGB Board Order: MGB 112/04. Relevant excerpts as follows:

[59] A complaint is not validly filed until the statutory requirements of an accompanied filing fee are satisfied. The statutory requirement of an accompanied filing fee must be complied with by the due date for the filing of the complaint. If the requirement of the filing fee is satisfied after the due date, as was the case at hand, then the complaint, although valid in form and content, is nevertheless out of time. There was no dispute in the subject case as to the due date for filing and the filing of the accompanied fee after the due date. There was also no argument that the filing deadline could be extended. Pursuant to many previous decisions of the MGB, there is no authority for an extension to be given to the filing deadline. As such, having found that complaints are invalid absent the filing fee, valid complaints were not filed within the allowable timeframe set out in the legislation and the ARB's decision to dismiss the subject complaints is upheld. Even if section 467 should be construed strictly and the ARB did not have the authority to dismiss for lack of the filing fee the ARB, based on the mandatory requirement for a filing fee to accompany the complaint, had no jurisdiction to hear the merit of the matter or to extend the time for the filing fee to be submitted. In either context the practical result is that the Appellant has lost its right of appeal on its own accord by not meeting all the mandatory requirements of the Act within the specified time.

- *August Hartman v. Edmonton (City)*, ARB decision Roll #8358509. Relevant excerpts as follows:

The decision of the Board is to dismiss the complaint and no merit hearing is to be scheduled.

#### **Reasons**

1. S. 460(2) stipulates that the complaint must be accompanied by any required fee if it is to proceed to a merit hearing.
2. The Board is satisfied that the Respondent provided sufficient information for the owner to complete all the necessary requirements.
3. The Board is satisfied that the Complainant did not file the complaint on time or provide the required fee.

- *1351043 Alberta Ltd. v. Wheatland County*. MGB Decision No. 0349 001/2010.

The complaint is invalid and the complaint is dismissed.

#### **Reasons**

Section 309 of the Act deals with the contents of the assessment notice and the Board is satisfied the Wheatland County met the legislative requirement to identify the final date for complaint on the front of the Property Assessment and Tax Notice. Following the April 16, 2010 mailing of the assessment and tax notice, the assessed person had approximately 74 days to file a complaint, which

in the Board's view is ample time to file a complaint. Nevertheless, the complaint was filed after the deadline for complaint.

Section 481 of the Act enables the municipality to set fees payable by persons wishing to make complaints. The Complainant failed to file the complaint fee required by Wheatland County.

Accordingly, the Board finds that the complaint did not comply with sections 309 and 481 of the Act and the complaint is dismissed pursuant to section 2(2) of MRAC.

[21] The Respondent asked the Board to deem the complaint invalid as there was no filing fee that accompanied the complaint, and the complaint was not in the proper form.

## **LEGISLATION**

### ***Municipal Government Act, RSA 2000, c M-26***

s 460(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.

s 460(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.

s 467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

### ***Matters Relating to Assessment Complaints Regulation, AR 310/2009***

s 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.

s 2(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.

## **DECISION**

[22] The decision of the Board is to declare the complaint invalid and the complaint will not proceed to a merit hearing.

## **REASONS FOR THE DECISION**

[23] The Board notes the Complainant did not provide any evidence to the Board to support the validity of the complaint.

[24] The Board is persuaded by the Respondent's evidence including the assessment brief, legislation and case law.

[25] Regarding the deadline date of March 12<sup>th</sup> 2012, the Board is convinced the complaint was filed after the deadline date.

[26] The Board was persuaded by the Respondent's ARB's case and the MGB's case laws regarding the absence of a filing fee to accompany the complaint form. The Board finds these case laws persuasive, compelling and influential.

[27] The Board is persuaded by the *Wood* decision of the Court of Queen's Bench of Alberta. This decision is recent, directly on point and binding upon the Board.

[28] In *Wood*, Justice Hillier cited the legislative sections requiring the CARB to dismiss out of time complaints. In addition, Justice Hillier noted that there are prior decisions of the ARB and the MGB which have held that complaints must be received by the ARB. These cases reject any power to exercise discretion to extend the statutory deadline.

[29] In conclusion, the Board does not have the authority or jurisdiction to extend the time line for the late filing of the complaint. Further, the Board does not have the authority or jurisdiction to validate the complaint that is absent the required fee.

[30] Given the Board's conclusion that the complaint was filed late and without the required filing fee, there is no need to decide whether the content of the complaint is sufficiently compliant with the legislation.

Dated this July 12th, 2012 at the City of Edmonton, in the Province of Alberta.

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Robert Mowbrey, Presiding Officer

*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, RSA 2000, c M-26.*

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