

**COMPOSITE ASSESSMENT REVIEW BOARD  
MUNICIPAL DISTRICT OF FOOTHILLS NO. 31**

**NOTICE OF DECISION**

IN THE MATTER OF COMPLAINTS against the assessment of property pursuant to the *Municipal Government Act RSA 2000, Chapter M-26, January 1, 2010 and Amendments Thereto (Act)* and *Matters Relating to Assessment Complaints Regulation AR 310/2009 (Regulation)*.

between:

**Platinum Communications, Complainant**

and

**Municipal District of Foothills No. 31, Respondent**

before:

**H. Kim, Presiding Officer**

This is a preliminary hearing of complaints to the MD of Foothills No.31 Composite Assessment Review Board (CARB) of in respect of property assessments prepared by the assessor of the Municipal District of Foothills No. 31 (MD) and entered in the 2013 Assessment Roll as follows:

<b>ROLL#</b>	<b>Location Address</b>	<b>Assessment Non-Residential</b>	<b>M &amp; E</b>
2002077500	Diamond Valley	78,570	3,950
2003357500	Millarville	78,570	4,960
2103235010	Priddis South	226,200	10,460
2129245000	Dewinton Blackwood	112,180	3,410
1728195980	Cayley	60,790	1,700
2102135010	Priddis East	-	8,600
2003292500	Priddis North	213,180	6,220
2028175000	Silvertip	77,180	4,720
2029057500	Bills Hill	211,610	16,180
2202177500	Cross	127,430	4,110
2129170000	DeWinton 2A	-	4,650
2201047520	Dewinton Duffin	-	7,890
2003200000	TurnerV West	78,570	2,710

This matter was heard on the 6<sup>th</sup> day of August, 2013 via teleconference, with additional submissions by email on August 14, 2013.

Representing the Complainant: B. Parkinson  
Representing the Respondent: D. Fraser

Attending for the Assessment Review Board: B. Bartnik

**BACKGROUND AND LEGISLATION:**

[1] This preliminary matter relates to complaints of the 2013 assessments of 13 roll numbers for non-residential land and improvements, and machinery and equipment (M&E) pertaining to communication towers in the MD.

[2] The MD issues its assessment and tax notices on a single document. The notices for 2013 were prepared in accordance with the Act:

309 (1) An assessment notice or an amended assessment notice must show the following:

- ...
- (b) the date the assessment notice or amended assessment notice is sent to the assessed person;
- (c) 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; ...

The notices stated:

Date mailed: May 10, 2013

Last date for written appeals: July 9, 2013

[3] The subject complaints were filed by fax, in a letter addressed to the ARB clerk stating:

We are requesting that the property tax on telecommunication infrastructure that brings broadband to rural customers be rescinded.

At the least, we request that the Non-residential Land assessment as it relates to the telecommunication tower be changed from \$13,780.41 to \$0.

We have also requested the opportunity to discuss this situation with Council and are awaiting a response to that request.

[4] Attached to the letter was a spreadsheet which listed the roll numbers and amounts under complaint, among other things. The letter was signed by the CEO of the company to whom the assessment and tax notices were addressed. The letter was dated June 9, 2013 however the fax header indicated it was received by the MD at 2:21pm on July 11, 2013. This was later than the last date for written appeals stated on the notice. The Act states:

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).

[5] The Act requires complaints to be filed in a prescribed form, detailed in the Regulation:

460 (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.

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.

[6] The MD does not have a complaint filing fee, and a complaint filed via fax within the required deadline using the form prescribed under the Regulation would have been accepted. In



the subject case, the complaints were not filed using the prescribed form, and faxed two days after the deadline stated on the assessment notice; therefore a preliminary hearing was set to consider whether the complaints were valid. The Regulation provides for a one member panel of the CARB to hear and decide on a matter relating to the validity of a complaint:

- 36 (2) A one-member composite assessment review board may hear and decide one or more of the following matters:

..  
(c) an administrative matter, including, without limitation, an invalid complaint;

[7] Notice was sent to the Complainant by email on July 19, 2013 setting the date for the preliminary hearing and advising of the disclosure deadlines.

### **PRELIMINARY MATTER**

#### **Disclosure**

[8] The Complainant did not file evidence for the preliminary hearing, and advised that the original complaint letter and attached spreadsheet would be the only evidence entered. The Respondent filed a 16 page disclosure document comprising argument, the original complaint letter, and the assessment notices for the property under appeal.

[9] The Regulation specifies that disclosure must take place at least 7 days prior to the hearing, and that evidence not disclosed may not be heard:

- 39 (2) If a complaint is to be heard by a one-member composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 7 days before the hearing date,
  - (i) disclose to the respondent and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the respondent and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
- (b) the respondent must, at least 7 days before the hearing date,
  - (i) disclose to the complainant and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the complainant and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence.

- 40 (2) A one-member composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 39.

[10] At the start of the hearing, the Complainant made verbal submission as to why the complaint was faxed when it was; however, the CARB determined that it was evidence that had not been disclosed. The Regulation has provision for abridgement of the disclosure timelines:

- 41 (1) A one-member composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 38.

[11] The hearing had commenced without the presence of the Respondent. The CARB requested the attendance of the Respondent to determine whether there was consent by all parties to abridge the time. The Respondent attended, and, after a recess, advised of no consent. Therefore the CARB determined that the evidence of the Complainant could not be heard.

[12] Neither party submitted argument referencing prior decisions with respect to the filing of a complaint after the deadline. Due to the preponderance of prior decisions, during the recess, the CARB requested distribution of CARB 73660J/2013, a May 31, 2013 decision, for comment by the parties prior to reconvening the hearing. When the hearing was resumed, it was evident that neither party had been afforded sufficient time to review the prior decision. The CARB determined that in the interests of procedural fairness, additional time to review and comment should be provided to the parties. Accordingly, on Aug 7, 2013 the CARB requested the ARB clerk distribute an additional decision, CARB 0132-01-2013 dated July 8, 2013, along with instructions to both parties to review and comment on both decisions in writing by 4pm August 14, 2013 with a copy to the other party. Should either party wish to comment on the response of the other party, they were to do so by 4pm August 21, with a copy to the other party. On August 14, 2013 the ARB clerk forwarded the Respondent's comments, and advised that the Complainant had nothing further to add to the statements made at the hearing.

### **ISSUES:**

[13] The issues in this preliminary hearing are:

1. Is the complaint invalid due to failure to file in the form set out in Schedule 1 of the Regulation?
2. Was the complaint made within the proper time?

### **Issue 1: Failure to file Complaint in the form set out in Schedule 1 of the Regulation**

#### **Complainant's Position:**

[14] The Complainant stated that the Complaint Form was not provided at any time during the email correspondence between the Complainant and the MD. This year was the first time the Complainant had been issued an assessment and tax notice and was not aware of the requirement to file using the Complaint Form. The letter and attached list of properties was the information the Complainant thought was necessary to file the complaint.

#### **Respondent's Position:**

[15] The Respondent's disclosure did not include the last page of the assessment notices which includes contact information and instructions on how to file a complaint. However, the Respondent stated that the information is provided, and that the Respondent and Complainant had correspondence on numerous occasions relating to the assessment. The legislation clearly requires that the Complaint Form be used to file a complaint.



## Findings and Reasons

[16] When the required information has been provided, the failure to file a complaint on the prescribed form does not require the complaint be dismissed. Sec. 460 of the Act sets out the process for filing a complaint, but the Act and Regulation do not state that the complaint must be *on* the form prescribed in the regulations, only that it must be *in* the form (emphasis added). The CARB considers this to be a relevant distinction, and finds that the substantive reason for Schedule 1 of the Regulation is to clearly set out the information required in a complaint in order to notify the municipality of the matters and reasons for the complaint. Sec. 460 lists the allowable matters of a complaint, and the information that a complainant must provide:

- 460 (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.

[17] The Complainant's letter initially complained that it should not be taxed at all, but went on to state that in the alternative, the non-residential land assessment should be zero. It is clear that the subject matter of the complaint is 460(5)(i) or (j): whether the property is assessable or exempt from taxation, and in the alternative, 460(5)(c): the amount of the assessment. The letter requested that the non-residential land assessment be changed from \$13,780.41 to \$0, listing the tax amount, not the assessment amount. The CARB notes that the prescribed form does not require the original assessment to be listed, so does not consider this error to be material.

[18] Sec. 467 of the Act states that the CARB must dismiss a complaint that does not comply with 460(7). Accordingly, the CARB reviewed the letter of complaint and attached spreadsheet to determine if the information provided is in compliance:

- the spreadsheet attached to the letter showed the non residential land assessment and tax amounts, as required in 460(7)(a),
- the letter stated the tax amount is incorrect and should be zero, per 460(7)(a),(b) and (c),
- the letter identified that if the Complainant were found to be taxable, the assessment should be zero, per 460(7)(d)

Therefore the letter and attached spreadsheet were, in all material respects, in compliance with the Act, and the Complainant's failure to file the complaint using the form set out in Schedule 1 of the Regulation does not render the complaint invalid.



**Issue 2: Failure to file the Complaint within the deadline stated on the Assessment Notice**

**Complainant's Position:**

[19] The Complainant agreed that the complaint was faxed on July 11, 2013 which was two days after the July 9, 2013 deadline noted on the assessment notice. The reasons for filing after the date noted were not considered by the CARB due to the Complainant's failure to disclose. Upon review of the recent decision circulated by the CARB, the Complainant said that it appeared to state that an additional seven days should be allowed, and that if that is the case the complaint was not late. The Complainant stressed that this was the first time that this tax had been imposed, and that the errors were due to unfamiliarity with the process; therefore the complaints should be heard and not dismissed as invalid.

**Respondent's Position:**

[20] The Respondent stated that the MD had complied with the requirements of the legislation and that the dates and procedures were in accordance with the instructions provided by Alberta Municipal Affairs, in their review and training courses. The annual 2013 Property Assessment Notice for the subject properties was mailed to the assessed person on May 10, 2013 and in accordance with the Act, the final date by which a complaint must have been made on the assessment was July 9, 2013.

[21] Section 461(1) of the Act states:

461 (1) 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 that notice.

Section 467(2) requires the CARB to dismiss a complaint that was not made within the proper time. Accordingly, the Respondent submits that the CARB does not have jurisdiction to hear a complaint regarding the assessment of the subject property.

**Findings and Reasons**

[22] The complaint was faxed two days after the deadline stated on the assessment notice, and due to non-disclosure, the CARB did not consider evidence from Complainant in support of his request to have the complaint heard. The Respondent presented legislation and arguments with respect to compliance with the legislation in preparing the notices. Neither party presented argument with respect to case law; however, the CARB, being well aware of prior decisions of CARBs, the Municipal Government Board (MGB) and the Courts on this point, determined that that parties should be made aware of them, for consideration and comment.

[23] The Respondent set the complaint deadline 60 days after the notice was sent, in accordance with the plain meaning of Sec. 309 of the Act; however, prior decisions have considered the proper interpretation of the provisions of the Act with respect to the meaning of "sent". In *Calgary (City of) v. Municipal Government Board*, 2004 ABQB 85 (the "Chow" case) the Court considered an application for judicial review of MGB Order 158/02. In upholding the MGB decision, which interpreted the word "sent" to mean "sent and received", the Court agreed with the reasoning set out by the MGB and stated that the decision was not flawed, it is clearly rational and in accordance with reason.



[24] *Edmonton (City) v Assessment Review Board of the City of Edmonton*, 2012 ABQB 399 was an appeal of an ARB decision that determined the complaint to be valid even though it was received five days after the deadline. In setting aside that decision and determining that the ARB did not have jurisdiction to extend the time for filing, Justice Hillier noted that the City of Edmonton set the deadline to include the required sixty days plus the period for deemed mail delivery. Justice Hillier further stated that the reasoning that an appeal period cannot properly begin to run until receipt of the decision to be reviewed is entirely logical.

[25] In essence, all of the decisions agree that with respect to a notice that can be challenged within a certain time, “sent” is to be interpreted as “sent and received”. Under current legislation, the date by which a complaint must be made is 60 days after the assessment notice is sent (and deemed to be received). The date of deemed receipt is determined through the application of the *Interpretation Act*, RSA 2000 Chapter I-8, which states:

- 23 (1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected  
(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta,  
...

[26] It should be noted that the Act has a provision that was not in place at the time of the *Chow* decision:

- 284 (3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.

Clearly, “mailed or otherwise delivered” contemplates the notion of delivery when a document is sent, and, when it is mailed, this section of the Act does not state that the date mailed is the date the document was delivered. The Act could have specified “deemed to be *received* on the day the document is mailed or otherwise delivered”, which would have been logical, if that had been the intent, since other sections of the Act (in Part 10) specify deemed receipt:

- 337 A tax notice is deemed to have been received 7 days after it is sent.

...

- 341 A tax payment that is sent by mail to a municipality is deemed to have been received by the municipality on the date of the postmark stamped on the envelope.

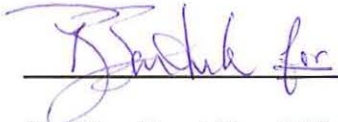
[27] The difference in wording suggests that the Act did not intend for the assessment notice to be deemed to be received on the date of mailing. The two recent CARB decisions that were distributed to the parties make detailed reference to prior decisions of the CARB, MGB and the Courts in determining that the 60 day deadline should make allowance for presumed delivery in setting the last date for complaint. This panel of the CARB finds no reason to depart from the reasoning of the prior decisions and agrees with the conclusion that, in the absence of evidence of delivery on a specific date, the complaint deadline is 60 days after presumed delivery.

[28] For the subject complaint, the date the notice was mailed was May 10, 2013. Presumed delivery in accordance with the *Interpretation Act* for the Complainant’s address in Alberta would be May 17, 2013. Thus, notwithstanding the deadline specified on the assessment notice, the deadline for complaint in accordance with the Act was July 16, 2013 which would mean the complaints were filed in time.

**DECISION:**

[29] The Complaint is valid and the ARB shall set a date for the merit hearing and provide notice to the parties in accordance with the legislation.

**Dated at the MD of Foothills, this 29<sup>th</sup> day of August, 2013.**

A handwritten signature in purple ink, appearing to read "H. Kim", is written over a horizontal line.

**H. Kim, Presiding Officer**



***APPENDIX "A"***

**EXHIBITS**

***NO.    ITEM***

1.    Complainant Appeal
2.    Notices of Tax and Assessment
3.    Notice of Hearing
4.    Respondent's Disclosure
5.    Respondent's submission of written comment

*Procedure for Appeal*

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- a) the complainant;
- b) an assessed person, other than the complainant, who is affected by the decision;
- c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;
- d) the assessor for a municipality referred to in clause c.

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to:

- a) the assessment review board, and
- b) any other persons as the judge directs.