

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

NOTICE OF DECISION

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

between:

Wayne and Margaret Potter, Complainant

and

Municipal District of Foothills No. 31, Respondent

before:

Rob Irwin, Presiding Officer
BJ Ersson and Roger Taylor, Board Members

This is the decision of the Composite Assessment Review Board regarding a complaint filed respecting:

ROLL # 2101350030

ASSESSED VALUE: \$258,180
REQUESTED ASSESSMENT: \$0

PROPERTY DESCRIPTION:

The subject is a 13.99-acre parcel with improvements listed as a 2,015 sq. ft. cedar log home with basement that was built in 1977. It is also reported that there is a detached garage built in 1975 (no dimensions were supplied), a 1,440 sq. ft. pole barn, a small 64 sq. ft. shed built in 1980 and a 50 sq. ft. telecommunications tower built in 1977.

This complaint was heard on the 21nd day of October, 2013 at the Okotoks Fire Hall, #1 325 Milligan Drive in Okotoks, AB.

Present on behalf of the Complainant:

Wayne Potter
Margaret Leigh Potter

Present on behalf of the Respondent:

Susan Staley
Diane Fraser

PRELIMINARY ISSUE:

The Complainants requested that the appeals submitted by W. Potter, Platinum Communications Corporation, Davinci Broadband Inc., and Xplornet Communications Inc. be heard concurrently as the appeals are against the assessment of similar improvements used for the same purpose.

COMPLAINANT'S POSITION:

The Complainants, as described above, were in agreement that their preference would be to argue their positions within the parameters of one hearing, and that the evidence and arguments from all Complainants be considered consistently with each appeal.

RESPONDENT'S POSITION:

The Respondent stated that they were prepared to respond to all evidence and arguments as presented by the Complainants within one presentation.

DECISION ON THE PRELIMINARY ISSUE:

The Board considered the arguments as presented by the Complainants and the Respondent. It was determined that the evidence and arguments presented at this hearing would be considered when determining the final decision with regards to each roll number as listed below:

W. Potter:
Roll Number 2101350030

Platinum Communications:
Roll Numbers 2002077500, 2003357500, 2103235010, 2129245000, 1728195980, 2102135010, 2203292500, 2028175000, 2029057500, 2202177500, 2129170000, 2201047520, 2003200000

Davinci Broadband Inc.:
Roll Numbers 2204070000, 2028272500, 2203 187510

Xplornet Communications Inc.:
Tax Role Numbers 1927145000, 2101350030, 2027217510, 1927134110, 2029120010, 2029045070

REASONS:

The Composite Assessment Review Board observed that although the reasons for complaint varied on the individual complaint forms, at this hearing all parties agreed that there was one sole issue and the same evidence was applicable to all appeals. It was decided to comply with the request agreed to by both parties.

BACKGROUND:

The subject of this appeal is the assessed value of a telecommunications tower located within the M.D. of Foothills. The subject has existed for numerous years but this is the first time that it has been assessed for the purposes of property taxes by the Assessor utilizing a newly created and adopted procedure.

ISSUE:

The only issue to be considered by the *Composite Assessment Review Board* (CARB) is:

The assessment is too high. Specifically in this hearing the Complainant argued that the land value of the assessment is incorrect and unfair.

RECORD OF PROCEEDINGS

COMPLAINANT'S POSITION:

The Complainant took the position that the assessment was unfair because the Assessor calculated the land area unfairly. It was explained that the tower is privately owned and the telecommunications lease is for only the top six feet of the pole.

The assessment reflects a site of 1-acre used in the calculations of the assessment and the Complainant stated this was incorrect and unfair as the footprint of the tower only measured 36" x 36". There are no guy wires or support structures. There is no private access road as access to the site is along the private drive used by the landowner daily.

The Composite Assessment Review Board was also advised that the land assessment of 1 acre was not a calculated size but an arbitrary and applied size and in excess of the real size. Based on the evidence presented the Composite Assessment Review Board was asked to alter the assessment on the improvement to \$0.

RESPONDENT'S POSITION:

The Respondent referred to Section 297 of the MGA and related the duties of the Assessor in assigning a classification and sub class to a property for assessment purposes. It was disclosed that the assessment under appeal had been the result of a study and a new procedure that had been implemented. It had been decided to assess all of the telecommunications towers that were located throughout the MD of Foothills. The Assessor noted that it had been a struggle to locate and develop a process to capture the uniqueness and special attributes of the telecommunications towers in an assessment. The Respondent then offered a list of comparable properties that had been used to develop the land values. The data was reviewed and the Assessor confirmed that a 1-acre size had been attributed to the site. The Respondent claimed the assessment had been correctly prepared utilizing a mass approach method outlined in the legislation and therefore believed it was fair to use the same base cost for each tower in the assessment calculations.

FINDINGS and DECISION:

The Composite Assessment Review Board found that the land value was unsupportable by fact. It was decided that it would be fair, logical and correct that the actual square footage of the footprint of the improvement, be used for assessment purposes. Those accurate measurements should be used in the re-calculations and the assessment for the roll # under appeal.

REASONS FOR DECISION:

The Composite Assessment Review Board was not persuaded that the Respondent's comparables reflected the land value attributed to the subject property in the assessment under appeal. The difference in land use and consideration of comparative market value were compelling.

LEGISLATION:

MGA 293 (1) In preparing the assessment, the Assessor must, in a fair and equitable manner (a) apply the valuation and other standards set out in the regulations.

MGA 467 (1) an assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

ISSUED THE 21ST DAY OF NOVEMBER, 2013.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Presiding Officer, R. Irwin.

For:
Presiding Officer, R. IRWIN

APPENDIX “A”

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE
AT THE HEARING:

	NAME	CAPACITY
1.	Wayne Potter	Complainant
2.	Margaret Leigh Potter	Complainant
3.	Bernard Parkinson	Complainant
4.	Kathy Kirkup	Complainant
5.	Douglas Stevens	Complainant
6.	Bill Macdonald	Complainant
7.	Ned Benner	Complainant
8.	Diane Fraser	Respondant
9.	Susan Staley	Respondant
10.	Roger Blackwood	Gallery

APPENDIX “B”

EXHIBITS

NO.	ITEM	
1.	Assessment Review Board Complaint	
2.	Hearing Notice	
3.	Respondent's Disclosure Statement	
4.	Complainant's Disclosure Statement	

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.