

**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:

**Xplornet Communications Incorporated, 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 # 1927145000, 2101350030, 2027217510, 1927134110, 2029120010, 2029045070**

**PROPERTY DESCRIPTION:**

The subject of this appeal is a telecommunications tower located in M.D. of Foothills No. 31. The subject has existed for numerous years but this is the first assessment by the Assessor utilizing a newly created and adopted procedure.

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

Present on behalf of the Complainant:

Bill Macdonald  
Ned Benner

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.:  
Roll 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.

**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 stated that the assessment was unfair because the Assessor calculated the land area unfairly. It was explained that the ownership, operation and leases of each site and tower are different. A few had guy wires or support structures but most were self supporting and had no special access roadways. The Composite Assessment Review Board was advised that the land assessment of 1.0acre was not a calculated size but an arbitrary 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 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 Roll Number2101350030) was included in this appeal but had been already appealed by the landowner. This highlighted a concern that the CARB had with the delivery of tax assessment notices to the correct parties. The MGA is clear on the procedures expected when delivering assessment notices and would draw the Municipalities attention to MGA 304 for direction in recording assessed persons.

The CARB 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 Numbers under appeal.

**REASONS FOR DECISION:**

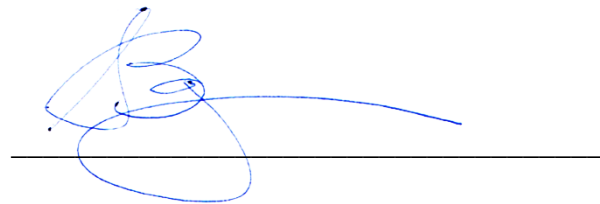
The Composite Assessment Review Board was not persuaded that the Respondent's comparables reflected the land value attributed to the subject property in the assessment under appeal. The difference in land use and consideration of comparative market value were compelling.

**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 21<sup>ST</sup> 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:

	<b>NAME</b>	<b>CAPACITY</b>
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	Respondent
9.	Susan Staley	Respondent
10.	Roger Blackwood	Gallery

***APPENDIX “B”***

**EXHIBITS**

<b>NO.</b>	<b>ITEM</b>	
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.