

NOTICE OF DECISION

Fairtax Realty Advocates
400, 360 Main Street
WINNIPEG MB. **R3C 3Z3**

City of Grande Prairie
10205 - 98 Street
Grande Prairie AB. **T8V 6V3**

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on June 26, 2013, respecting a preliminary matter for five roll numbers:

Roll Number	Municipal Address	Assessed Value	Owner	Assessment Notice for:
749410	11120 100 Ave.	\$3,817,300	Artis REIT	2013
755000	10910 105 Ave.	\$2,541,600	Artis REIT	2013
782470	11226 100 Ave.	\$2,103,500	Artis REIT	2013
782490	11245 to 11353 104 Ave.	\$7,802,800	Artis REIT	2013
854500	9801 to 9833 116 Street	\$43,779,200	Artis Grande Prairie Retail Ltd.	2013

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.

cc:

Grande Prairie Composite Assessment Review Board

Citation: Fairtax Realty Advocates Inc. v The City of Grande Prairie

Between:

Fairtax Realty Advocates Inc.

Complainant

and

The City of Grande Prairie

DECISION OF

James Fleming, Presiding Officer

In Attendance (by Teleconference)

Ms. T. Williams for the City of Grande Prairie.

Mr. S. Storey for the Complainant, FairTax Realty Advocates Inc.

Preliminary Matters

[1] The parties had no objection to this matter being heard by a one member CARB and had no objection to the Panel Member.

[2] In response to questioning, Ms. Williams advised there were two Assessors in attendance with her as observers.

[3] The Complainant's agent filed assessment appeal forms for various properties in the City of Grande Prairie with the Clerk of the Grande Prairie Composite Assessment Review Board (CARB). The forms arrived at the CARB Clerk's office one day after the complaint deadline, which was stated on the assessment notices as April 30, 2013. The Clerk flagged this circumstance, and set this preliminary hearing for a single member panel to determine whether the appeal was filed late and, if so, the effect of the late filing.

[4] The Complainant argued that the CARB should hear the appeals notwithstanding the late filing. In support, it referred to a number of emails, which its agent asked the CARB to enter as an exhibit for this preliminary hearing. The Presiding Officer found these documents properly formed part of the CARB record, since they had been exchanged prior to the hearing and were known to the parties. Accordingly, the request was granted and the emails entered as Exhibit C1.

[5] The Complainant began his presentation by noting that they had worked in many locations in Alberta over the years and was familiar with the local procedures even though they were based in Winnipeg.

[6] They indicated that "smaller" municipalities in Alberta (such as Grande Prairie) sometimes were a problem for them because the courier companies would not guarantee next day delivery.

[7] They acknowledged that this is what happened in the case under complaint. The Complaint forms and filings had been couriered from Winnipeg on April 29th, 2013, but had not been delivered to the CARB until May 1st, 2013, one day after the deadline.

[8] The Complainant argued that the nature of the dialogue between themselves and the Assessor for the City (as outlined in Ex C1) was such that they assumed that if it was not received by the deadline, there was ample evidence of intent, and the response of the Assessor may have misled them that the Complaints would be accepted.

[9] The Complainant went on to say that they normally tried to negotiate with the Municipality to reduce the assessments, and that was the situation in these complaints. They represented that there had been ongoing discussions with the Assessors since March of 2013 in an attempt to reach an agreed amount for the Assessment of a number of properties. They pointed out that they recognized that time was getting short, and so they had reduced the number of properties under negotiation to facilitate the chance for an agreement thereby obviating the need for a complaint.

[10] Finally, they referred to their Exhibit C1 noting that in their opinion, the Assessor had been the one to suggest delaying the filing by indicating that they wished to discuss the assessments within the office, and that they could respond Monday April 29th at 10:00 AM. The Complainant then highlighted a passage in the Email from the Grande Prairie Assessor which said "The appeal deadline is Tuesday ...so this should still give you lots of time." The Complainant took this as permission to delay filing the Complaints until at least Monday April 29th, 2013. In point of fact, the two parties were unable to reach agreement on a compromise assessment value for the five rolls under discussion on April 29th, and so the Complainant sent the Complaints by Courier on April 29th 2013.

[11] In response to questions, the Complainant indicated it was their practice NOT to file complaints by Fax or by electronic delivery because the packages they provided were large and detailed and they were concerned they would not transmit well by Fax, and they acknowledged that they were uncomfortable with the technology behind Electronic delivery.

[12] In response to further questions the Complainant indicated that they had not provided any legislative or case law support for their complaint, but were effectively relying on a common sense analysis of the facts surrounding the negotiations between the parties.

[13] The City of Grande Prairie provided individual packages for each of the roll numbers under complaint. These packages comprised a total of 37 pages (including individual Email cover pages) which, for efficiencies sake, were combined and marked as Exhibit CGP1.

[14] Each of the Roll Number packages included a summary of the reason the complaints were rejected and three appendices including a copy of the Assessment Review Board Complaint, a copy of the Courier Envelope with the date of receipt written on the envelope and the Grande Prairie Property Assessment Notice. As well, a copy of the Notice of Hearing was included.

[15] The City asked that their documentation serve as their evidence and argument. It should be noted that the Assessors no position on the question of lateness.

Decision

[16] The complaint was filed on May 1st, 2013, and is within 67 days of the date of the notice of Assessment. The Complaint is therefore valid and should proceed to a hearing on its merits.

Reasons For The Decision

[17] Both parties agree that the Complaints were submitted one day after the deadline.

[18] The issues are twofold for the Complainant: Is there any basis for the deadline to be extended for the filing of Complaints, and if so, do the facts of this Complaint merit extension of the deadline.

[19] Although the Complainant chose not to refer to any legislation, it is useful to review the main areas of the *Municipal Government Act Revised Statutes of Alberta 2000 Chapter M26* (MGA) which deal with Complaints.

[20] Section 461.1 states that "A complaint must be filed with the designated office at the address shown on the assessment or tax notice, not later than the date shown on that notice."

[21] This section then leads to a review of the Property Assessment Notice (contained in each of the Roll Number packages in Ex. CGP1). The Notice quite clearly sets out the "FINAL DATE OF COMPLAINT April 30, 2013", and explains the steps to take in the event one wishes to complain. This section indicates that the Complaint must be submitted "by the FINAL DATE of COMPLAINT."

[22] Finally, Section 467(2) says "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)."

[23] It should also be noted that the "Assessment Review Board Complaint" form also contains a notice that "...complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid."

[24] Accordingly, it is clear from the legislation and the Complaint form, that Appeals submitted after the deadline "must be dismissed" in accordance with section 467 (2), and "are invalid" according to the Complaint form.

[25] The Complainant did not submit evidence which suggested the CARB had authority to exercise discretion to vary the filing deadline, and the CARB was not aware of any authority, statutory or otherwise, which permitted discretion with respect to the filing deadlines.

[26] The CARB reviewed and put weight on **Edmonton (City) v Assessment Review Board of the City of Edmonton, 2012 ABQB 399 (Hillier Decision)**. This decision, by Honourable

Mr. Justice S.D. Hillier, spoke to the fact that the Assessment Review Board did not have the discretion to vary the filing deadlines for any reason.

[27] However, in reviewing the legislation and previous decisions of the Courts (including Justice Hillier's) and CARB's in other municipalities, there is an issue of timing that has a bearing on this appeal. It should be noted that neither party raised this matter in the appeal.

[28] Section 309 of the MGA set out below specifies in section 309 "(c) that the complaint deadline "must be 60 days after the assessment notice is sent to the assessed person.

Contents of assessment notice

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

- (a) the same information that is required to be shown on the assessment roll;
- (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;
- (d) the name and address of the designated officer with whom a complaint must be filed;
- (e) any other information considered appropriate by the municipality

[29] The issue that has developed around this wording is the meaning of the word "sent" in Section 309(c), and whether it implies the notion of delivery. Consequently, there have been a number of decisions of various bodies which have concluded that the *Interpretation Act Revised Statutes of Alberta 2000 Chapter 18* (IA) needs to be considered, and thus, have decided that the 60 days needs to be 60 days after presumed delivery which according to the IA Section 23(1)(a) is "7 days from the date of mailing if the document is mailed in the province of Alberta to an address in Alberta..".

[30] Practically, this means that the deadline should be 60 days after "presumed" delivery which according to the IA is 7 days after mailing. In the cases under consideration, the date of the Notice is March 1st 2013, which would mean that the deadline would be 67 days after the notice date which would mean the Complaints were filed in time.

[31] The issues and precedents in the timing are addressed very well in *Calgary CARB Decision 73658 J/2013* by T. Helgeson. Helgeson notes that a seminal case *Calgary (City of) v. Municipal Government Board, 2004 ABQB 85* (the Chow decision) decided that "sent" meant "sent and received" and although the legislation changed in 2010, he found nothing in the new legislation that would change this principle.

[32] As part of this review, Helgeson also addressed MGA Section 284 (3) which is set out below. Section 284 was new to the MGA when it was amended in 2010, but Helgeson found that this wording did not adequately address the issue of sent and received, and so the Chow decision and the IA should still apply.

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.

[33] Finally, the CARB, in the current case, also reviewed an Assessment Bulletin published by the Government of Alberta Municipal Affairs Department. This Bulletin, designated 10-05 and dated November 2010 is entitled Assessment Notice – Date by which a complaint be made. It re-states Section 309(1)(c) and Section 284(3) and says that Municipal Affairs indicates that "60 days starts from the date the notices were sent."

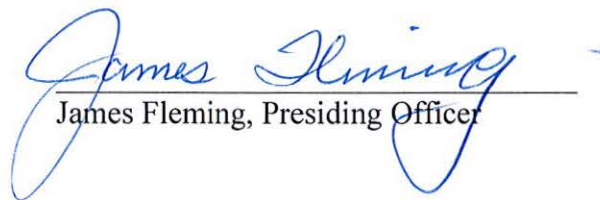
[34] There is no indication whether other CARB's or Court's considered this bulletin in their interpretation of the 60 day timeframe, however the CARB, upon review, finds that it suffers from the same deficiency as Section 284 (3) in that it does not address the issues raised in Chow and others that "sent means sent and received". Accordingly, it is of limited value in deciding this issue.

[35] In the final analysis, Hillier establishes that there is no discretion to vary the deadline for the receipt of Complaints, however Chow and others as outlined in *Calgary CARB 73658 J/2013* have decided that the reasonable interpretation of the wording of the legislation and the application of the IA, results in a deadline of 67 days from the date the assessment notice was put in the mail.

[36] This CARB agrees with this reasoning and so finds that the Complaints were received in time, and thus decides that the Complaints should proceed to a merit hearing as noted above.

[37] It should be noted that other municipalities (Edmonton for example), have addressed this matter by providing a 67 day deadline in their assessment notices.

Dated this 8 day of July, 2013, at the City of Edmonton, Alberta.


James Fleming, Presiding Officer

APPENDIX "A"
DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

ITEM

1. C1	Complainant Disclosure
2.. CGP1	City Summary

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.*