

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #01/2010-J

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Tristar Communities Inc. - Complainant

and

The Town of Okotoks - Respondent

BEFORE:

J. Gilmour, Presiding Officer

A preliminary hearing was held on August 4, 2010 at the Okotoks Municipal Centre Council Chamber to consider complaints about the assessments of the following property tax roll numbers:

Roll Number: 40

Roll Number: 90

Roll Number: 94180

APPEARANCES:

Complainant: M. Moledina

Respondent: P. Huskinson

PART A: BACKGROUND

On May 18, 2010 the Complainant came to the Town office and filed his complaint form. On May 14, 2010 the ARB clerk phoned the Complainant to return and sign the complaint form in a number of places on the form itself. On June 10, 2010 the clerk again called the Complainant to advise him he needed to give reasons for the complaint. The Complainant was on holidays and failed to comply with this request.

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On July 16, 2010 the Town forwarded a notice of hearing to the Complainant advising him that a preliminary hearing will be held to determine if the complaint form filed by the Complainant on May 14, 2010 was completed properly in accordance with the relevant legislation.

PART B: LEGISLATIVE AUTHORITY

I Municipal Government Act

- Section 460(2)

“A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by council under section 481(1).”

- Section 460(7)

“A complaint 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 value, if the complaint relates to an assessment.”

- Section 467 (2)

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

II Matters Relating to Assessment Complaints Regulation – Regulation 310/2009 (MRAC)

- Section 1 (l)(e)

“Complaint form”

- (i) in the case of a complaint to be heard by an assessment review board, the form set out in Schedule 1.”

- Section 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.”

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- Section 9(1)

“A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.”

- Section 2(2)

“If a complaint does not comply with subsection (1)

(a) The complaint is invalid, and

(b) The assessment review board must dismiss the complaint.”

- Section 9(1)

“A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.”

PART C: PROCEDURAL OR JURISDICTIONAL MATTER

The CARB derives its authority to make decisions under Part II of the Act.

The Respondent raised the only jurisdictional issue before this tribunal, namely:

Should the complaints of the Complainant be found to be invalid and dismissed by reason of incomplete complaint forms?

The CARB reviewed the three complaint forms filed by the Complainant and found in each case that box 3 at section 4 had been checked and the requested assessed value in section 5 had been included for each of the three properties. The complaints were filed on time and the required fees were paid.

The Respondent argued that the Complainant failed to comply with all of the four requirements noted in section 460(7) of the Act which is again referred to in section 5, Schedule 1 of MRAC. Although some sections of this provision had been complied with by the Complainant, the Respondent argued that the company had failed to indicate in their complaint form “including why the information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues”.

The Respondent argued that based on the complaint form filed by the Complainant, it is unclear as to the specific issues which are to be addressed. For this reason the Town is unable to respond to the reasons or rationale for the requested new proposed assessment valuation figure from the Complainant.

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On the grounds that the Complainant has failed to comply with the mandatory provisions of section 460(7) of the MGA and Section 5, Schedule 1 of MRAC, the Respondent asks the Board to find the complaint invalid and it should dismiss this complaint.

PART D: DECISION

The CARB finds merit in the Respondent's argument that the new legislation creates greater obligations for both parties in addressing an assessment complaint. The expectation for this new process would be that all parties would be accountable for an effective, efficient and timely complaint system.

In several of the important provisions of the legislation in the filing of a complaint, the language is clear. The inclusion of the word "must" in these directions indicates an obligation on behalf of the complainant and the board to ensure the complaint form is completed comprehensively and accurately in the preparation of a merit hearing.

For example, section 460(2) of the MGA states that the complaint "must" be in the form prescribed in MRAC. Section 460(7) states that the complaint "must" include the form prescribed prerequisites. Section 467(2) states that the CARB "must" dismiss a complaint if it does not comply with Section 460(7) of the Act.

Section 2(l) of MRAC notes that the complainant "must" file the complaint form set out in Schedule 1 of the regulations. Section 2(2) of MRAC then goes on to order that the CARB "must" dismiss the complaint if the form does not comply with Schedule 1.

In order for the Respondent to know the argument of the Complainant before a merit hearing, the legislation has set out a number of requirements that must be identified as noted in the legislation and in the complaint form itself.

In the case before the Board, as noted in section 460(7)(b), the complainant "must" explain in what respect the assessment notice information is incorrect. In the complaint form (Schedule 1 of MRAC) the complainant, in section 5 of this document, is required "to include identifying the specific issues related to the incorrect information that is to be decided by the assessment review board, and the grounds in support of these issues". None of the above information was provided by the Complainant on his three complaint forms.

The dismissal of a complaint is a decision not lightly taken after an assessed person has taken the action of filing a complaint and paying the required fee. However, the new legislation is now very specific if the grounds for a complaint are not complied with in the application process itself.

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Section 467(2) of the Act states that the review board "must" dismiss a complaint if the complaint does not comply with section 460(7).

Section 2(2) of MRAC notes that if a complaint does not comply with section 2(1), the complaint is invalid and the review board "must" dismiss the complaint.

Section 9(1) of MRAC states that a composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form. This section is repeated in bold print on the complaint form itself. It stands as a further roadblock to a hearing, in that even if one were convened, it would be rendered immediately meaningless as no evidence or argument could be heard.

For the reasons as noted above, the complaints are found to be invalid and are dismissed.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 11th day of August 2010.



(for) J. Gilmour, Presiding Officer