

COUNTY OF PAINTEARTH NO. 18 BOARD ORDER CARB 2011-1

IN THE MATTER OF A COMPLAINT filed with the County of Paintearth No. 18 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

BETWEEN:

Alberta Power (2000) Ltd. c/o AEC International Inc. (AEC) represented by Bennett Jones LLP
– Complainant

- and -

County of Paintearth No. 18 (Paintearth) represented by Reynolds Mirth Richards & Farmer LLP
- Respondent

BEFORE:

Paul Petry, Presiding Officer
Tony Nichols, Member
Wayne Richardson, Member

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Staff:

T. Peach, Composite Assessment Review Board Clerk

A preliminary hearing was held on July 5, 2011 in Castor, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

70005980	Assessment	\$59,318,860
----------	------------	--------------

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

This appeal relates to a 2011 property assessment notice for buildings and structures. The issue raised by the Complainant is that the assessed value of property on this roll number includes the value of linear property. The Complainant argues that the value of the improvements pertaining to linear property should be transferred to the linear property roll and valued accordingly.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. During the hearing, the parties addressed the CARB on several preliminary issues, which are addressed below.

Preliminary Matter #1	Scheduling of preliminary hearing and Evidence Disclosure timelines
Preliminary Matter #2	Scheduling of merit hearing and Evidence Disclosure Timelines

Preliminary Matter #1 – Scheduling of preliminary hearing

The CARB heard from counsel for Paintearth who advised that the preliminary issue relates to sections 460(7) and 460(11) of the *Municipal Government Act*, R.S.A. 2000, c.M-26 ("MGA"). The municipality is of the view that the complaint does not comply with the provisions of s. 460(7) and s. 460(11) of the *Municipal Government Act*, and the provisions of s. 2 of the Matters Relating to Assessment Complaints Regulation. The municipality is asking the CARB to schedule a hearing to resolve the above issues as soon as possible and will be asking for the complaint to be dismissed for a failure to comply with MGA s.460(7), 460(11) and s. 2 of the regulation. Dates had been circulated between counsel for AEC and Paintearth, being July 26, 27 and 28, 2011, but the parties were not certain as to the CARB's availability. Counsel for the County of Paintearth suggested disclosure dates of July 14 for Paintearth and July 25 or 26, 2011 for AEC. Counsel for Paintearth was agreeable to having the hearing in the Paintearth Administration building.

The CARB heard from counsel for AEC and a representative of AEC. They indicated July 28th was available to AEC and agreed that July 26, 2011 is agreeable for their exchange date. They were agreeable to having the hearing in the Paintearth Administration building, but expressed a desire for a later start time so that they could travel from Calgary in the morning.

Decision

The Preliminary hearing will be heard by the CARB on July 28, 2011 started at 10:30 am in the Paintearth Administration building.

The exchange dates are as follows:

Paintearth Disclosure	July 14, 2011
AEC Disclosure	July 26, 2011
Hearing date:	July 28, 2011

All disclosure is due by 4:30 p.m. on the dates set out above, as is the usual practice of the CARB.

The parties may exchange electronic copies with hard copies to follow. The CARB will accept electronic copies on the dates, with 5 hard copies for distribution. The parties must send the hard copies to the CARB in advance of the hearing.

The written materials must be page numbered and the parties should be conscious of the organization of the materials to assist the parties in finding references in the written materials.

Reasons for Decision:

The parties are in agreement with having the preliminary issued argued before the merit hearing and have agreed to both the preliminary hearing date and the exchange dates, above. The agreed upon dates permit the parties time to prepare their argument in advance of the hearing.

Preliminary Matter 2 -- Scheduling of the merit hearing and Evidence Disclosure Timelines

The CARB heard from counsel for AEC in relation to setting the hearing dates and disclosure dates for the merit hearing. He advised that the complaint is based on a number of issues, one of which is with respect to the power plant in question and the related structures. AEC submits that what has been currently assessed by the local assessor should be in the assessment made by the linear assessor. AEC has also filed a complaint to the Municipal Government Board in relation to the linear assessment. There is an impact on both Paintearth and the linear assessment. He submitted that the same arguments and evidence will be presented to both the MGB and the CARB. He questioned whether there will be a duplication by calling the same witnesses, and conducting the same cross examination in both hearings. He urged the CARB to consider whether it is sensible and efficient to have a combined hearing process with the MGB and CARB hearing the same evidence at the same time so that there is not a duplication of expense. He also expressed a concern about possible inconsistent rulings by the MGB and the CARB.

He acknowledged that his suggestion was novel, but suggested that if all parties agree, it could be done. He did not have a specific mechanism to recommend to the CARB, but was looking for a more efficient way to have the two appeals heard. He suggested that the scheduling of the merit hearing should be delayed to permit the parties to explore this possibility.

In response to an enquiry from counsel for Paintearth in relation to the witnesses AEC will be calling, counsel for AEC indicated that they are still in the process of formulating the complaint. He does not quarrel with Paintearth's need for time to consult with other experts. AEC stated that they are looking at which witness will give evidence on how to allocate costs between the linear and the building and structure. They may need a separate witness for this, or possibly a currently identified witness may be able to do that.

The representative of AEC advised the CARB that the MGB is hearing an appeal in relation to 2 power plants, one in Paintearth and one in the Municipal District of Greenview No. 16 (Greenview's municipal seat is in Valleyview). He suggested that that all 3 hearings (MGB, Paintearth CARB and Greenview CARB) could be most cost effectively heard together.

The CARB heard from counsel for Paintearth who indicated that the hearing for July 28, 2011 is restricted to whether the complaint form meets the requirements of the MGA. Counsel for Paintearth has not had the opportunity to obtain instructions on a combined hearing. The linear assessor would also need to be consulted on a combined hearing. There are other administrative matters which would need to be resolved prior to a combined hearing occurring.

The linear complaint deals with three large issues. The first issue is in common with the issue before the CARB: whether the buildings which have been assessed as structures should be assessed as linear. The other two issues at the linear hearing address the included costs and the application of CCRG, and the depreciations in schedule C. The latter two issues are significant issues, but they have no relevance at the CARB merit hearing. There is much less overlap than one might see initially.

Counsel for Paintearth acknowledged that the result of two hearings may be inconsistent decisions. She indicated that she had no instructions on a coordinated or combined hearing. Moreover, it would require a fair bit to coordinate and a number of parties would have to be willing to conduct one hearing (including the CARB in Greenview, and the Greenview Council who would need to change their Assessment Review Board Bylaw as well).

In relation to the scheduling of merit hearing, Paintearth needs to have some idea of the witnesses that the Complainant would like to call, so that Paintearth can determine if it has the right witnesses and if they are available. Paintearth is contemplating 3 witnesses at this point. If AEC will be calling the same witnesses from the linear hearing, then Paintearth would not likely need a depreciation witness.

There are too many variables currently to permit the setting of a merit hearing.

Decision

The CARB will not set the merit hearing and disclosure dates at this time. On July 28, 2011, the parties should be prepared to address the CARB on the issue of setting dates for the merit hearing and disclosure dates and to report back to the CARB on the status of their efforts in relation to having a combined hearing of the linear appeal, the Paintearth CARB hearing and the Greenview CARB hearing.

Counsel for AEC is directed to advise the CARB no later than July 26, 2011 as to the steps taken between July 5 and July 26 in relation to a combined hearing.

Reasons for Decision:

AEC has raised the issue of a combined hearing and Paintearth appears open to exploring the idea. The CARB feels that the matter of a combined hearing should be initiated by the parties rather than the CARB, but is willing to become involved should the parties report that the other affected parties are agreeable to it.

The CARB believes that since AEC has raised the idea, counsel for AEC should take the necessary steps to determine if the other affected parties are agreeable to a combined hearing and should report to the CARB at the July 28 hearing as to the progress made in this regard.

As a result of the uncertainty about the hearing process; the need to hear argument on the preliminary issue; the large number of variables still to be determined, including the number of witnesses, the CARB is of the view that it would be premature to set the merit hearing date and disclosure dates at this time. The CARB also notes the agreement of both parties to deferring the setting of the dates.

The CARB is prepared to examine further the possibility of a combined hearing, if reasonable progress is made as to how this can be accomplished and if all parties are agreeable. The CARB is prepared to pursue any necessary changes to the Paintearth bylaws to permit this to occur.

COUNTY OF PAINTEARTH NO. 18 BOARD ORDER CARB 2011-1

The CARB however, is mindful of the statutory timelines and will expect to work toward some resolve at the jurisdictional hearing July 28, 2011.

DECISION

1. The Preliminary hearing will be heard by the CARB on July 28, 2011 started at 10:30 am in the Paintearth Administration building.

The exchange dates are as follows:

Paintearth Disclosure:	July 14, 2011
AEC Disclosure	July 26, 2011
Hearing date:	July 28, 2011

All disclosure is due by 4:30 p.m. on the dates set out above, as is the usual practice of the CARB.

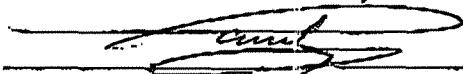
The parties may exchange electronic copies with hard copies to follow. The CARB will accept electronic copies on the dates, with 5 hard copies for distribution. The parties must send the hard copies to the CARB in advance of the hearing.

2. The CARB will not set the merit hearing and disclosure dates at this time. On July 28, 2011, the parties should be prepared to address the CARB on the issue of setting dates for the merit hearing and disclosure dates and to report back to the CARB on the status of their efforts in relation to having a combined hearing of the linear appeal, the Paintearth CARB hearing and the Greenview CARB hearing.

Counsel for AEC is directed to advise the CARB no later than July 26, 2011 as to the steps taken between July 5 and July 26 in relation to a combined hearing. Counsel for the County of Paintearth may also wish to provide an overview relative to the progress made toward the potential of a combined hearing process.

It is so ordered.

Dated at the City of *Lethbridge* in the Province of Alberta, this 12 day of July 2011.



Paul Petry, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO. ITEM

R1	Letter dated May 24, 2011 from counsel for Paintearth to Assessment Review Board Clerk, Email dated June 6, 2011 from counsel for Paintearth to Assessment Review Board Clerk; Email dated June 14, 2011 from counsel for Paintearth to Assessment Review Board Clerk
----	---

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

- | | | |
|----|-----------------|---|
| 1. | A. Friend, Q.C. | Counsel for the Complainant (via telephone) |
| 2. | C. Hall | Representative of the Complainant (via telephone) |
| 3. | C. M. Zukiwski | Counsel for the Respondent (via telephone) |
| 4. | I. Hanson | Counsel for the Respondent (in person) |
| 5. | T. Willoughby | Assessor for the Respondent (in person) |

Observers:

- | | | |
|----|------------------|----------------------|
| 1. | Reeve G. Glazier | County of Paintearth |
| 2. | B. Hepp | County of Paintearth |