

Decision # CARB 0262 550/2013  
Complaint ID 550/551  
Rolls 931306 and 931555

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COMPOSITE ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: JUNE 27, 2013

PRESIDING OFFICER: J. DAWSON  
BOARD MEMBER: A. KNIGHT  
BOARD MEMBER: V. KEELER

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BETWEEN:

TREIT HOLDINGS 10 CORPORATION

Complainant

-and-

THE CITY OF RED DEER

Respondent

[1] This is a preliminary hearing in regards to complaints to the Central Alberta Regional Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Red Deer and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER:	931306	931555
MUNICIPAL ADDRESS:	3310 50 AV	3210 50 AV
ASSESSMENT:	\$26,168,600	\$2,165,500

[2] The preliminary hearing was heard by the Composite Assessment Review Board (CARB) on the 27th day of June 2013, in the Crimson Star Room, 2nd Floor, Red Deer City Hall.

[3] Appeared on behalf of the Complainant:

- S. COOK Agent, Colliers International Realty Advisors

[4] Appeared on behalf of the Respondent:

- R. KOTCHON Assessor, City of Red Deer
- A. MECKLING Assessor, City of Red Deer

## **JURISDICTION**

[5] The Central Alberta Regional Assessment Review Board (hereinafter, "the Board") has been established in accordance with section 456 of the Municipal Government Act R.S.A. 2000, ch M-26 (hereinafter, "the MGA") and the City of Red Deer Assessment Review Board Bylaw 3441/2009.

[6] Neither party raised an objection to any Board member hearing the complaint.

[7] No procedural or jurisdictional matters were raised by either party.

## **PRELIMINARY MATTERS**

[8] The following three Preliminary Matters were brought forth prior to the scheduled preliminary hearing:

1. Respondent – non-disclosure of Complainant materials
2. Respondent – postponement request
3. Complainant – incomplete disclosure of Respondent materials

### **1. Respondent – non-disclosure of Complainant materials:**

[9] The Respondent requested the Board to find the Complainant materials inadmissible due to late filing. As per section 40(2) of Matters Relating to Assessment Complaints Regulation (hereinafter, "MRAC"), the Board must not hear evidence that has not been properly disclosed in section 39. In section 39 (b) the Respondent must disclose 7 days prior to the scheduled hearing.

[10] In the scheduled preliminary matter, the named Complainant (TREIT Holdings) is the Respondent. The City of Red Deer claims that the disclosure was not received until June 26, 2013 – one day prior to the scheduled hearing while TREIT Holdings argues that the disclosure was sent on June 18, 2013 at 4:11 PM to the electronic mail address assigned to the Board with copies to the Assessor (Item 1).

[11] The Assessor explained that the electronic disclosure was placed into a quarantine account by the computers of The City of Red Deer and was not released until June 26, 2013 9:44 AM rendering it late for the purposes of this hearing. The Assessor also asserts that the file was sent with a request of confirmation, and because TREIT Holdings did not receive the confirmation, they should have contacted the Assessor to address the issue before the disclosure deadline.

[12] TREIT Holdings argues that they sent the documents on time, to an electronic mail address assigned for this purpose and that they did not receive any indication from The City of Red Deer that the documents were not correctly delivered.

## **Board Finding**

[13] The Board finds that the Complainant's disclosure was sent to the Board and to the Respondent within the timelines required under section 39 of MRAC and in a means permitted within the MGA section 608. The hearing is to proceed as scheduled.

### **2. Respondent – postponement request:**

[14] The Respondent requested a postponement of the hearing because they have not had sufficient time to review the Complainant disclosure. When asked, the Respondent indicated that a postponement until 1 PM June 27, 2013 (3 hours) would be sufficient.

[15] The Complainant objected to the request because his schedule required him to return to Edmonton to catch a flight at 4 PM.

## **Board Finding**

[16] The Board finds that the Complainant's disclosure was sent to the Board and to the Respondent providing sufficient time for review and the circumstance making it unavailable to the Respondent to review is not considered exceptional, as required, within section 15(1) of MRAC.

### **3. Complainant – incomplete disclosure of Respondent materials:**

[17] The Complainant requested the Board to find the Respondent materials inadmissible due to incomplete filing. As per section 40(2) of MRAC, the Board must not hear evidence that has not been properly disclosed in section 39. In section 39 (a)(ii) the Complainant must provide an estimate of the amount of time necessary to present their disclosure.

[18] In the scheduled preliminary matter, the named Respondent (The City of Red Deer) is the Complainant. TREIT Holdings claims that the disclosure from The City of Red Deer did not include the estimated time required.

[19] The Assessor explained that they assume all hearings will be completed within the date scheduled and that if a hearing is expected to require additional time then additional time requirements are discussed with the clerk and the taxpayer. The Assessor confirmed that no estimate of time was provided within their disclosure.

[20] TREIT Holdings argues that they are being held to the letter of the legislation and regulation by The City of Red Deer, so then too, The City of Red Deer must adhere to the letter of the legislation and regulation.

## **Board Finding**

[21] The Board finds that the Respondent's disclosure was not complete and therefore inadmissible. The Preliminary hearing does not have a valid Complainant disclosure document; therefore, the original preliminary matter before the Board fails, and the clerk has been ordered to schedule a merit hearing on the original complaints.

## **SUMMARY**

[22] For the reasons noted above the complaints are ordered to be scheduled for merit hearings as follows:

COMPLAINT ID:	550	551
ROLL NUMBER:	931306	931555
MUNICIPAL ADDRESS:	3310 50 AV	3210 50 AV
DECISION:	PROCEED TO MERIT	PROCEED TO MERIT

[23] Dated at the City of Red Deer, in the Province of Alberta this 8th day of July, 2013 and signed by the Presiding Officer on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.

  
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J. Dawson, Presiding Officer

**This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).**

**APPENDIX "A"**

Documents Presented at the Hearing  
and considered by the Board

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<u>NO.</u>	<u>ITEM</u>
1.	Electronic quarantine details

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<b>Decision No.</b> CARB 0262-550/551/2013		<b>Roll No. 931306 and 931555</b>		
<b><u>Appeal Type</u></b>	<b><u>Property Type</u></b>	<b><u>Property Sub-Type</u></b>	<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>
CARB	Other Property Types		Insufficient/No Response Request	-