

**TOWN of REDCLIFF
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Debut Development Inc., COMPLAINANT

and

The Town of Redcliff, RESPONDENT

before:

Paul G. Petry, PRESIDING OFFICER

A preliminary hearing was convened on October 4, 2010 in the Town of Redcliff in the Province of Alberta to consider an application brought by the Complainant, Debut Developments Inc. concerning Local Improvement Tax complaints filed with respect to the following properties:

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|----|------------------------|---|
| 1. | Tax Roll Number | 0260400 |
| | Legal / Civic Address: | Unit 3, Plan 0813840 / 3 115 – 3 St. NE |
| 2. | Tax Roll Number | 0275700 |
| | Legal / Civic Address: | Unit 5, Plan 0813840 / 1 119 - 3 St. NE |
| 3. | Tax Roll Number | 0275900 |
| | Legal / Civic Address: | Unit 7, Plan 0813840 / 3 119 - 3 St. NE |
| 4. | Tax Roll Number | 0276000 |
| | Legal / Civic Address: | Unit 8, Plan 0813840 / 4 119 - 3 St. NE |
| 5. | Tax Roll Number | 0260700 (2009 Tax Year) |
| | Legal / Civic Address: | Unit B, Plan 0813840 / 129 - 3 St. NE |
| 6. | Tax Roll Number | 0260700 (2010 Tax Year) |
| | Legal / Civic Address: | Unit B, Plan 0813840 / 129 - 3 St. NE |
| 7. | Tax Roll Number | 0260600 |
| | Legal / Civic Address: | Unit A, Plan 0813840 / 119 3 St. NE |

This preliminary matter was heard by a One-member Composite Assessment Review Board (CARB) on October 4, 2010 at the Town of Redcliff Council Chambers at #1 – 3RD Street N.E., Redcliff, Alberta.

Appearing on behalf of the Complainant:

- Debut Developments Inc. – Ms Danica Prpick, President

Appeared on behalf of the Respondent:

- Town of Redcliff – Mr. David Wolanski, Municipal Manager

Attending – Assessment Review Board Clerk – Ms Shanon Simon

Background:

The Town of Redcliff had undertaken a local improvement project along 3rd Street where the subject properties are located. The Town had first imposed local improvement taxes associated with the cost of these improvements on May, 2009. No complaint was made at that time by Debut Developments, however the local improvement tax was revised in 2010 and these revisions were included with the combined tax and assessment notice sent to the Complainant by the Town of Redcliff on May 21, 2010. The Complainant, in accordance with the provisions of the Municipal Government Act (MGA) section 460 (8.1), has filed seven complaints as noted above. The preliminary hearing on October 4, 2010 as agreed by both parties is to resolve the question as to which assessment review board has the jurisdiction to hear and decide the matters associated with these complaints.

Issue:

Which assessment review board, the composite assessment review board (CARB) or the local assessment review board (LARB) has the fundamental jurisdiction to hear and decide the issues respecting the subject complaints?

SUMMARY of the PARTY'S POSITIONS

Complainant

The Complainant's letter dated August 31, 2010 indicates that two of the seven complaints have four dwelling units and therefore in accordance with the MGA section 460.1(a) and (2) these complaints should be heard by a CARB and the others by a LARB. However, the Complainant requested that because all seven complaints are essentially the same they should be heard by the same CARB. This would save the review boards and the parties considerable hearing time by avoiding redundancy and should result in consistent decisions which may not otherwise be the case if two different review boards are involved. In response to a question by the Board respecting what bearing 460.1 (1)(b) may have on the question before the Board, the Complainant indicated that complaints pertain to tax information contained within the

assessment notices and therefore 460.1(1)(a) or 460.1(2) should apply.

The Complainant also raised a concern respecting conflict of interest or bias as all the LARB Board Members are also on Town Council. It was argued that there would be less bias and more objectivity if these complaints are heard by a CARB.

Respondent

The Respondent, in their letter dated September 27, 2010 states the position of the Town of Redcliff is that the complaints are without merit and the validity of the complaints are questioned. On the question as to which board should hear the complaints, the Town of Redcliff set out its interpretation of the MGA section 460.1 (1) and (2) and concluded that three of the complaints should be heard by a CARB and four of the complaints should be heard by a LARB. This conclusion was based primarily on the number of dwelling units on each of the subject properties. In response to the same question asked by the Board to the Complainant respecting what bearing 460.1 (1)(b) may have on the question before the Board, the Respondent indicated that it is possible that all of the complaints should be heard by a LARB but whether a LARB, a CARB or combination thereof the decision should be one that is based on the correct application of the MGA and Matters Relating to Assessment and Complaints Regulation (MRAC) and not on the basis of convenience.

With respect to the Complainant's concern with potential conflict of interest or bias of Board members the Respondent suggested that should Board members decide they should recuse themselves in this case, there is the option of appointing Board members from a wider pool if necessary.

Findings and Reasons:

The question before the CARB in this case is primarily one of determining the correct interpretation and intent of the MGA and MRAC pertaining to the jurisdictions of a CARB or a LARB to hear complaints regarding local improvement tax matters. Section 460(1) of the MGA set out the base provision for these complaints as follows:

"a person wishing to make a complaint about any assessment or tax must do so in accordance with this section."

It is important to note that an assessment notice and the contents thereof as set out in section 309 of the MGA is distinct from a tax notice as set out in section 334 of the MGA. These are two different types of notices and they are also distinguished as such, under the provisions of the MGA respecting the jurisdictions of assessment review boards. The jurisdiction of assessment review boards is set out in section 460.1 and reads as follows"

"460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

(a) an assessment notice for

- (i) residential property with 3 or fewer dwelling units, or*
- (ii) farm land*

or

(b) a tax notice other than a property tax notice.

(2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a)."

It is clear from 460.1(1)(b) that matters relating to tax notices fall under the jurisdiction of the LARB. This becomes even more clear wherein sub (2) which sets out the jurisdiction of a CARB does not include matters shown on a tax notice but only matters that are shown on an assessment notice. The scheme of jurisdiction is also apparent where the regulation, MRAC, sets out the jurisdiction of one-member LARB and CARB boards. MRAC section 30(2)(a) indicates that a LARB may hear and decide "a complaint about a matter shown on a tax notice, other than a property tax notice". Section 36(2)(a) of MRAC provides that a one-member CARB may hear and decide "a complaint about any matter shown on an assessment notice, other than an assessment". There is no separate provision allowing a CARB to hear matters relating to a tax notice.

Section 333 of the MGA does allow for the combination of assessment notices and tax notices, however, the CARB does not believe that when this occurs it shifts the jurisdiction from a LARB to a CARB. Even though notices may be combined on one document it remains clear as to what information pertains to the assessment notice and what information pertains to a tax notice. Turning to the complaints now before this Board, the CARB finds that they concern "tax notices other than property tax notices", and not "assessment notices for property". This is clear from section 396(1), which indicates that after preparing a local improvement plan "the municipality must send a tax notice to the persons who will be liable to pay the local improvement tax", following which council may impose the tax, thus triggering the one year appeal period under section 460(8). Section 309 also supports this conclusion, since the contents it requires for a property assessment notice do not match what is to be found in a local improvement tax notice. Further, it establishes a different appeal period than the one year period applicable to complaints about local improvements.

In light of the foregoing the CARB finds that the subject tax notice complaints all fall under the jurisdiction of the LARB and this is not affected by the number of dwelling units that may be a factor when considering jurisdiction respecting assessment notices.

The Board has taken note of the Complainant's concern with regards to potential conflict of interest or bias of local assessment review board members. Both parties have a right to expect that the Board members hearing and deciding a matter will be free of any conflict of interest and any actual or apprehension of bias. It is generally accepted as a matter of fairness and good practice that Board members will recuse themselves ahead of the hearing if they are aware of the parties to the complaint and believe that there may be a reasonable objection to their involvement because of a conflict of interest or a reasonable apprehension of bias. Also general practice is for the Board at the opening of a hearing to invite the parties to raise any reason for an objection to any member of the Board on this basis. If such an opportunity is not offered by the Board a party nevertheless has the right to bring any concern in this regard to the attention

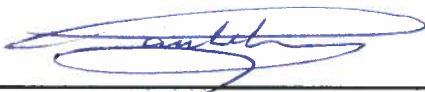
of the Board at the outset of the hearing. It appears that the Town of Redcliff ARB has considered the potential of such issues and is prepared to respond in a manner which will result in fair LARB hearings.

Decision Summary

The decision of the CARB is that a CARB does not have jurisdiction respecting local improvement tax complaints. The matters raised in the subject complaints therefore should be heard by a LARB. The Board notes that the ARB Clerk has scheduled the hearing of these matters for December 1, 2010 and the parties agreed that the disclosure dates as set out in the Clerks notice on September 15, 2010 for a LARB hearing are correct and understood. These matters should therefore proceed to a LARB hearing on December 1, 2010.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 15 DAY OF October 2010.



Paul G. Petry
Presiding Officer

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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*

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- (a) *the assessment review board, and*
 - (b) *any other persons as the judge directs*