

CARB 0349 002-2010

**WHEATLAND COUNTY
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:

799991 Alberta Ltd., COMPLAINANT

and

Wheatland County, RESPONDENT

before:

Paul G. Petry, PRESIDING OFFICER

A preliminary hearing was convened on October 7, 2010 in Wheatland County in the Province of Alberta to consider an application brought by the Complainant, 799991 Alberta Ltd. concerning a postponement of the hearing scheduled for November 19, 2010 respecting a property entered in the 2010 Assessment Roll as follows:

ROLL NUMBER	LAND DESCRIPTION
ROLL NUMBER: 7514000	S.W. – 33 – 22 – 25 – W4

This preliminary matter was heard by a One-member Composite Assessment Review Board (CARB) on October 7, 2010 at the Wheatland County Council Chambers Highway 1, R.R. 1 Strathmore, Alberta.

Appearing on behalf of the Complainant:

- 799991 Alberta Ltd. – Mr. Ted Kleysen

Appearing on behalf of the Respondent:

- Wheatland County – Mr. Dennis Klem, Senior Assessor

Attending:

Assessment Review Board Clerk – Ms Jennifer Deak and Assistant Ms Margaret Desaulniers

CARB 0349 002-2010**Background:**

The subject property is a 77.39 acre parcel of land on which the owners operate an RV campground and RV storage business. On April 16, 2010 Wheatland County send out the 2010 Property Assessment and Tax Notice to the owners which indicated that the final date for complaint respecting this notice would June 30, 2010. A valid complaint was filed on June 30, 2010 and a hearing date was subsequently scheduled for November 19, 2010. The Complainants have requested that the November 19, 2010 hearing be postponed to an undetermined day in May 2011. This request is the reason for the preliminary hearing on October 7, 2010. The CARB provided the parties with its oral decision on this matter at the conclusion of the hearing on October 7, 2010. This document is the written decision with reasons as required 468 of the Municipal Government Act (Act). At the out set of the hearing the CARB made an observation that some of the notice and disclosure dates pertaining to this preliminary hearing may not have provide the times anticipated by the regulations, however the parties appear to be ready to proceed. The CARB indicated that it may abridge these timelines with the agreement of the parties. The parties both indicated their agreement to abridge the times specified in section 38 of the Matters Relating to Assessments and Complaints Regulation and proceed with the hearing.

Issues:

- 1) Does the CARB have jurisdiction and authority to postpone the hearing of this matter as requested by the Complainant?
- 2) If the CARB has the jurisdiction and authority, should the Board use its discretion and exercise its authority in this case?

SUMMARY of the PARTY'S POSITIONS**Complainant**

The Complainants indicated that their commitment to operating their campground and RV business consumes all of their time during the camping season. At one point the business employed eleven employees, however all employees have since been let go and Mr. Ted Kleysen and Mr. Wayne Kleysen operate the business by themselves which requires their full attention seven days a week. The Complainants stated that the business has not made a profit over the last two operating years and this coupled with the fact that the business is seasonal results in the need to augment the business income with gainful employment in the off season. Mr Wayne Kleysen has already left to take up prior commitments in India and Mr. Ted Kleysen will leave soon to continue his seasonal employment in the U.S. In addition to the business operating commitments and seasonal employment commitments, the Complainants argue that their case has become much more complex than originally anticipated. It was stated that as a result of some basic investigation respecting a comparable property, meetings with the Assessor and other taxpayers and through consultation with their lawyer, they now realize that extensive work must be done in order to properly prepare for the hearing of their complaint. Based on the fact that both Complainants will be out of the country until April or May of 2011,

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they request that the hearing of their complaint currently scheduled for November 19, 2010 be postponed until May 2011.

Respondent

The Respondent referred the Board to section 468 (1) of the Municipal Government Act (Act) stating that the CARB is required to render its decision 30 days from the conclusion of a hearing or by December 31 of the tax year, whichever is earlier. Therefore the CARB does not have authority to postpone the hearing of this complaint to a date that would not allow the Board to have its decision made and in the hands of the parties by December 31, 2010. The Respondent also referred to section 15 of Matters Relating to Assessments and Complaints Regulation (MRAC) which provides for postponements but only in exceptional circumstances and such postponements must take into account the deadline for decisions set out in section 468 of the Act. The Respondent reviewed the chronology of the events concerning the subject complaint beginning with a meeting between the Assessor and the Complainant June 22, 2010. The Respondent argued that given the meetings related to the complaint, the August 30, 2010 Notice of Hearing and publications provided to the Complainant regarding the complaint process including disclosure timelines, the Complainants should have been well informed concerning their obligations in preparing for the November 19, 2010 hearing. The Respondent indicated that an offer has been extended to allow the Complainants to participate in the November 19, 2010 hearing by way of teleconference or video conference given their absence from the country. The Respondent argued that given the Complainants' opportunity to understand their obligations respecting the complaint process and the opportunity to participate in the hearing by teleconference or video conference, "the exceptional circumstance" set out in section 15 of MRAC has not been met. The Respondent, nevertheless set out two potential options respecting the requested postponement.

1. Not allow the postponement for the reasons given above; however the Board may wish to consider an adjustment of the dates for disclosure of evidence.
2. Should the CARB consider a postponement under section 15 of MRAC and in light of the requirements of section 468 of the Act, the postponement should be to a date not later than December 10, 2010. This would require an adjustment to the previously established disclosure dates.

Findings and Reasons:

The Respondent had raised a question concerning the Minister's authority to alter prescribed dates in the Act or regulations. Section 605 of the Act sets out the Minister's Authority in this regard, however, the circumstances would undoubtedly have to be very unusual. In this case, given its findings the CARB is not in a position to take any action respecting the Minister's prerogative in this regard. The Complainants can decide whether they wish to pursue this matter.

In considering the matter of postponements, the CARB is bound by the limits of its authority and jurisdiction under the Act and Regulations. Section 468(1) of the Act reads as follows:

"Subject to the regulations, an assessment review board must, in writing, render a

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decision and provide reasons, including any dissenting reasons,

- a) Within 30 days from the last day of the hearing or*
- b) Before the end of the taxation year to which the complaint that is the subject of the hearing applies,*

whichever is earlier."

Based on the above provision, the CARB while having some authority to consider postponements is nevertheless restricted in that regard as hearings of complaints and the resulting decision of the CARB must be rendered in this case by December 31, 2010.

With respect to the request for postponement, the Board is guided by section 15 of MRAC which reads as follows:

"15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.

(3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted."

This provision clarifies that the CARB when considering a postponement must be guided by the requirement to render its decision no later than December 31, 2010. Also postponements may only be granted under exceptional circumstances as determined by the Board.

In this case, the Complainants had in excess of 75 days between the assessment notice and the date on which a complaint must be filed to consider their complaint and determine the grounds or issues for the complaint. Then upon filing the complaint on June 30, 2010, to the date disclosure is required on October 8, 2010, the Complainants have had an additional 99 days to complete their investigations and develop their evidence for the November 19, 2010 hearing. The Board understands the Complainants' heavy workload involved in operating their business without assistance. However, the Complainants were well aware of the timelines involved in being prepared for the hearing of their case. The Board understands that the degree of preparation may have expanded as the Complainants uncovered certain aspects or issues that they wish to pursue, however it is incumbent on the Complainants to manage their preparation within the prescribed time constraints. In answer to a question by the Chair, the Complainants indicated that they are not prepared to provide their disclosure as required on October 8 because they fully expected that their request for postponement would be granted.

Despite the conclusions of the CARB as reviewed above the Board has some concern with respect to denying any form of postponement which in turn results in the retention of the October 8, 2010 disclosure requirement. It can be argued that the Complainants should have been more aware of the constraints on the CARB to grant postponements and not have relied on the granting of their request. The October 8, 2010 deadline, however now only allows the

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Complainants one day to file their disclosure and the Board is concerned that given the facts in this case procedural fairness would not be served. The CARB also has taken into account the fact that the Respondent has offered through its option 2) that some level of postponement is workable. Given that at the conclusion of the hearing the CARB needs time for its deliberations and writing of its decision before December 31, 2010 any postponement cannot be late in the month of December. Based on these considerations the CARB has decided that a postponement of the November 19, 2010 hearing will be granted within the restrictions of 468(1) of the Act.

Decision

The decision of the CARB is as follows:

- 1) **The hearing of this complaint is postponed to December 13 and 14, 2010.**
- 2) **The disclosure of the Complainants' evidence in accordance with section 8 (2)(a) of MRAC must be submitted to the Clerk of the ARB and the Respondent by the end of the business day on November 1, 2010.**
- 3) **The disclosure of the Respondent's evidence in accordance with section 8 (2)(b) of MRAC must be submitted to the Clerk of the ARB and to the Complainant by the end of the business day on November 29, 2010.**
- 4) **The disclosure of the Complainants' rebuttal evidence if any, in accordance with section 8 (2)(c) must be submitted by the end of the business day on Dec. 6, 2010.**

The above dates vary slightly from those which were tentatively discussed at the close of the hearing on October 7, 2010. The CARB has been guided by section 22 of the Interpretation Act and section 8 of MRAC in setting out the above dates.

It is so ordered.

DATED AT THIS 14 DAY OF October 2010.



Paul G. Petry
Presiding Officer

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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*

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