

IN THE MATTER OF A COMPLAINT filed with the Municipal District of Greenview No. 16 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:

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

- and -

Municipal District of Greenview No. 16 (Greenview) represented by Reynolds Mirth Richards &
Farmer LLP - Respondent

BEFORE:

Paul Petry, Presiding Officer
Don Gourlay
Tom Burton

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Staff:

J. Squire, Composite Assessment Review Board Clerk
T. Marin, Assistant to Composite Assessment Review Board Clerk

A preliminary hearing was held on August 4, 2011 in Valleyview, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

156510	Assessment	\$9,609,260
--------	------------	-------------

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

This appeal relates to a property assessment for building and structure. 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

The CARB heard full submissions on Preliminary Matter #1. However, in relation to Preliminary Matter #2, the CARB requested that the parties provide further submissions (as set out below). This decision addresses only Preliminary Matter #1.

Preliminary Matter #1 – Scheduling of Preliminary Hearing

The CARB heard from counsel for Greenview who advised that there are 3 preliminary issues. The first is in relation to section 460(11) of the *Municipal Government Act*, R.S.A. 2000, c.M-26 ("MGA"). The second is in relation to section 460(7) of the MGA and section 2 of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 ("MRAC"). The third is in relation to section 295(4) of the MGA. The municipality is of the view that the complaint does not comply with the above provisions of MGA and MRAC. 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 based upon the arguments put forward at the preliminary hearing. Dates had been circulated between counsel for AEC and Greenview, being September 20, 2011, but the parties were not certain as to the CARB's availability. Counsel suggested disclosure dates of August 30, 2011 for Greenview and September 9, 2011 for the Complainant. Counsel later agreed to September 14, 2011 as the disclosure date for the Complainant. Counsel for Greenview was agreeable to having the hearing in the Greenview Administration building. Counsel for Greenview suggested a start date of 9:00 am due to the number of issues and due to the fact that the Respondent would be calling at least 1 witness for the hearing.

The CARB heard from counsel for the Complainant and a representative of AEC. They indicated September 20, 2011. They suggested September 16, 2011 for the Complainant's disclosure date, but later agreed to September 14, 2011 as their disclosure date. They were agreeable to having the hearing in the Greenview Administration building.

Decision

The Preliminary hearing will be heard by the CARB on September 20, 2011 starting at 9:00 am in the Greenview Administration building.

The exchange dates are as follows:

Greenview Disclosure:	August 30, 2011
AEC Disclosure	September 14, 2011
Hearing date:	September 20, 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 should comply with section 8 MRAC and contain will-say statements for any witness evidence.

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 briefly heard from both counsel in relation to setting the hearing dates and disclosure dates for the merit hearing. Both counsel agreed that the merit hearing could be heard in the new year without a loss of jurisdiction by the CARB.

Both parties agreed to provide further submissions in writing to the CARB on the following matters:

1. The circumstances which would cause a delay of the merit hearing of this complaint until 2012;
2. The jurisdiction of the CARB to hear a complaint beyond the end of the year, in light of section 468 of the MGA and s. 15 MRAC;
3. Their position in relation to the role of the Minister of Municipal Affairs, in light of section 605 of the MGA; and
4. The length of time expected to be required for the hearing, possible start dates, witness availability, etc.

The parties agreed that the municipality is to provide its submissions on the above matters by 4:30 p.m. August 10, 2011 and the Complainant is to provide its submissions on the above matters by 4:30 p.m. on August 12, 2011. The parties may exchange electronic copies with each other and may send electronic copies to the CARB. For these materials in relation to Preliminary Issue #2, there is no need for hard copies to follow. However, the CARB directs each party to bring 2 hard copies of their submissions for the CARB's files on September 20, 2011.

Decision

The CARB will not set the merit hearing and disclosure dates until it has received submissions from the parties.

Reasons for Decision:

The parties have jointly agreed that the hearing can proceed past the end of the year. The CARB would like to have further submissions from the parties in relation to the items set out above prior to making its decision.

Although the CARB is mindful of the statutory timelines, the CARB requires further submissions prior to making a decision on this point.

DECISION

1. The Preliminary hearing will be heard by the CARB on September 20, 2011 at 9:00 am in the Greenview Administration building.

The exchange dates are as follows:

Greenview Disclosure:	August 30, 2011
AEC Disclosure	September 14, 2011
Hearing date:	September 20, 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.
3. The parties shall provide submissions in relation to
 - a. The circumstances which would cause a delay of the merit hearing of this complaint until 2012;
 - b. The jurisdiction of the CARB to hear a complaint beyond the end of the year, in light of section 468 of the MGA and s. 15 MRAC;
 - c. Their position in relation to the role of the Minister of Municipal Affairs, in light of section 605 of the MGA; and
 - d. The length of time expected to be required for the hearing, and recommendations respecting potential hearing dates along with corresponding disclosure dates.

with the Respondent providing its submissions no later than August 10, 2011 at 4:30 pm and the Complainant providing its submissions no later than August 12, 2011 at 4:30 pm. The parties may exchange electronic copies with each other and may send electronic copies to the CARB. For these materials in relation to Preliminary Issue #2, there is no need for hard copies to follow. However, the CARB directs each party to bring 2 hard copies of their submissions for the CARB's files on September 20, 2011.

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 6th day of August, 2011.


P. Petry, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM

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. R. Fortin	Counsel for the Respondent (via telephone)

Observers:

- | | | |
|----|-------------|--|
| 1. | B. Caldwell | Municipal District of Greenview No. 16 |
|----|-------------|--|