

Complaint ID 245  
Roll 1011245  
Decision #PREC0262 245/2011

---

**COMPOSITE ASSESSMENT REVIEW BOARD DECISION**  
**Preliminary HEARING DATE: 12 JULY 2011**

**PRESIDING OFFICER: J. SCHMIDT**

---

**BETWEEN:**

**CITY OF RED DEER**

**Applicant**

**-and-**

**RED DEER RETIREMENT GROUP LTD.**

**Respondent**

---

This One-member Composite Assessment Review Board has been established in accordance with section 454.2(3) of the Municipal Government Act R.S.A. 2000, ch M-26 (MGA).

**Applicant Representatives**

Mr. Michael Arnold – Assessor, City of Red Deer

**Complainant – Not in Attendance**

Grant Thornton, LLP, Agent for Red Deer Retirement Group Ltd.

**Designated Officer**

Ms. Sonya Parsons – LGS Board Clerk, City of Red Deer

**Observer**

Mr. Kevin Bohlken – Assessor, City of Red Deer

**Property owner and description:**

Red Deer Retirement Group Ltd.

Roll No. 1011245

Legal Description Lot 1, Block 11, Plan 9722001

Municipal Address 9 Avery Street

This hearing application came forward on grounds the assessment complaint was not filed on time and therefore invalid.

### **Evidentiary Facts Presented**

- On January 19, 2011 a Property Assessment Notice was issued identifying March 21, 2011 as the final date of complaint (Exhibit A1, p.6).
- During 2011 and before the final date for filing a complaint, Grant Thornton LLP received authorization from the property owner to exercise limited Power of Attorney and Declaration of Representative respecting matters related to the subject property assessment and taxation (Exhibit C5, 3 pages).
- On March 4, 2011 a regulated Assessment Complaints Agent Authorization was signed, naming Grant Thornton LLP to act on behalf of the assessed person (Exhibit C2).
- On March 7, 2011 the assessed person, Red Deer Retirement Group Ltd., completed a regulated Assessment Review Board Complaint form (Exhibit C1).
- On March 11, 2011 via certified mail, Grant Thornton LLP advised the City of Red Deer Clerk of the Assessment Review Board that an assessment complaint form was being attached to serve as "Notice of Protest" against the subject property (Exhibits C3, C4).
- The City of Red Deer, Assessment Review Board Clerk stamped the March 11, 2011 certified letter as being received March 22, 2011 (Exhibit C3).

### **Issues to be Decided**

1. Was the complaint made within the proper time for filing as shown on the assessment notice?
2. Is there a valid assessment complaint available to be heard by an Assessment Review Board?

### **Legislation**

In deciding this matter the particular legislative requirement governing property assessment complaints are considered.

#### ***Municipal Government Act***

*284(3) For the purposes of this Part and Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.*

*309(1) An assessment notice or an amended assessment notice must show the following:*

- (b) the date the assessment notice or amended assessment notice is sent to the assessed person;*
- (c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person;*
- (e) any other information considered appropriate by the municipality.*

*460 (1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.*

*(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.*

*467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).*

### **Applicant's Position**

It was the Applicant's opinion that the complaint against the subject property should be dismissed due to late filing.

The Applicant argued that if a complaint is to be heard, the Complainant must complete and file a complaint in the form set out in Schedule I of Alberta Regulation 310/2009 (MRAC). If the Complainant does not comply with the requirements set out, the complaint is invalid and must be dismissed.

The Schedule I complaint form was referred to, identifying in particular an important notice on the form under Section 7. In part, it states complaints submitted after the filing deadline --- are invalid. It was further argued that a ministerial directive was issued, under a November 2010 Bulletin, which states that the MGA requires that the date by which a complaint must be made is 60 days after the assessment notice is sent pursuant to s. 309(1)(c) of the Act. The Bulletin further states, in part, that the term "sent" is given meaning under s. 284(3) of the Act, that any document including an assessment notice, is deemed to be sent on the day the document is mailed or otherwise delivered.

In summation it was tendered that the complaint in this case was received after the final complaint date of March 21, 2011 and when regard is given to the assessment complaint regulation, the ministerial directive (Bulletin) and the MGA the complaint should be dismissed.

### **Complainant's Position**

The Complainant was not in attendance at this hearing; however, as a matter of procedure, the Assessment Review Board Clerk entered into the record documents which have been exchanged relative to this matter. The documents were entered and are shown as Exhibits C1 to C7.

By way of a letter dated June 30, 2011 (Exhibit C7) the Complainant requested that the (appeal) complaint as filed be allowed to proceed to a hearing.

Upon having given careful consideration to the evidence, argument and facts which came forward at this hearing, the findings, reasons for the finding and decision is provided as follows.

### **Finding**

1. The complaint made was filed within the 60 day time as shown on the subject property assessment notice.
2. The assessment complaint at issue is a valid complaint and is available to be heard by an Assessment Review Board.



## Reasons

The Applicant City is relying on an opinion that for an assessment complaint to be valid, it must be received on or before the final date of complaint. Section 309(2) indicates that the date shown on the notice by which the complaint must be “made” is 60 days after the notice is “sent”. In this case there can be no doubt that the final date for complaint was March 21, 2011, which is the date shown on the notice. The question is when was the complaint “made”, and what had to be done in order to make it? Did it need to be “sent” as of the deadline, or physically received by the Clerk as filed?

The evidence shows that the complaint form was completed on March 7, as revealed by Exhibit C1. No meaning is given in the Act to the word ‘made’. In one sense, the complaint was ‘made’ on March 7, when the form was filled out - well within the 60 day complaint period. However, the purpose of the complaint deadline is to make the assessor and assessment review board aware of the complaint so that the hearing process can begin within a reasonable amount of time. Thus, the Board is satisfied it is not sufficient to make the complaint by filling out the form; rather, it must be forwarded or sent to the Board in some fashion so that they may become aware of it.

The Act is silent as to whether the complaint form must be physically received or merely “sent” in order to be “made” in time, though section 467(2) indicates that complaints that are not “made” in time must be dismissed. On the other hand, as noted by the Applicant, section 284(3) the Act does define “sent” to mean the date of mailing; therefore, if “sending” a completed complaint is enough to “make” it, then the complaint was made within time, as it was sent by certified mail some 10 days before the complaint deadline.

The Board is convinced that the operative provision in this case must be section 284(3). It is not uncommon for complainants to mail their complaint forms to assessment review boards, since the boards are often located away from the properties in question and it is not always practical to appear in person to file a form. In the Board’s view, the Act must have contemplated that complaint forms would be sent by mail. Further, the Act is now explicit that the municipality may notify complainants of their assessments by mail and that the 60 day notice period begins at the date of mailing; therefore, without specific direction to the contrary, it would be inconsistent to interpret the Act as requiring physical receipt to provide the municipality with notice of a complaint.

In considering this matter, the Board also looked at section 2(1) of the *Matters Relating to Assessment Complaints Regulation*, which recognizes that that complaint forms must be completed and “filed” with the Board if they are to be considered valid; however, this provision does not indicate *when* the application must be filed or physically received, nor could it override or expand the provisions of the Act – particularly when the consequence is as serious as removing a right of appeal. The Board also noted the portion of the form in Schedule 1 of the Regulation, which indicates:

“Complaints with an incomplete form, complaints submitted after the filing deadline, or complaints without the required filing fee are invalid”.

The form here speaks of “submission” of documents, without defining what submission involves; however, this term can reasonably be interpreted as “sending”. In any event, as indicated above, the form approved in the Regulation must be interpreted in a way that is consistent with the Act.

In view of the above, the board concludes that the Complainant satisfied the Act's requirements by mailing the complaint form by certified mail some 10 days before the complaint had to be "made". While the Act and Regulation thereto make no mention of a physical receipt date for documents that are required to be sent, the Board finds the Complainant made all reasonable efforts to comply with the municipal assessment notice instruction "must be received --- on or before the Final Date of Complaint (Exhibit C6)" by mailing the complaint form some ten days prior. The Complainant should not be penalized for delay in the mail that was beyond its control. Accordingly, the complaint may still be scheduled and proceed.

The Applicant's opinion in this case is not accepted.

### **Decision**

The application to find the subject complaint invalid as being filed late is denied.

It is so ordered.

Dated in the City of Red Deer, in the Province of Alberta, this 21<sup>st</sup> day of July, 2011.

  
\_\_\_\_\_  
Jack Schmidt, Presiding Officer

*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.*