

Linear Property Assessment Complaints Post 2010:

Intro to new legislation

Overview:

MGB before and after Bill 23

- Previous MGB jurisdiction was for Property assessment appeals and complaints, including Linear Property, Annexations, IMDs, and Subdivision appeals.
- In 2010, the only assessment appeals that will be heard are those for linear property.
- MGB retains jurisdiction over the Planning matters above.

The New MGA and REGS Linear Property

- Amended MGA (Linear - Part 12 - ss. 485-527.1)
- MRAC - MGB/Linear
 - (Part 2 – ss. 18-29)
 - (Part 3 – ss. 42-47)
 - (Part 6 – ss. 51-54)

I. Relevant Changes to the MGA

Filing:

- (a) deadlines (s. 309(1)(c) & 491(1))
- (b) linear form: information/content
- (c) complaint fee
- (d) hearing timelines

**Filing Deadlines
(MGA s. 309(1)(c) & 491(1))**

Contents of assessment notice

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

- (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*

Change:

Previously "not less than 30 days" after the assessment notice.

**Filing Deadlines
(MGA s. 309(1)(c) & 491(1))**

Form of complaint

s. 491(1) Any matter that is to be dealt with by a hearing before the Board must be in the form prescribed by the regulations and must be filed with the administrator within the following periods:

- (a) for a complaint about an assessment for linear property, not later than the date shown on the assessment notice

**Filing Deadlines
(MGA s. 309(1)(c) & 491(1))**

Example: For 2010 (Tax year):

- Based on a January 29, 2010 Assessment date, the Complaint filing Deadline will be March 30, 2010.

Note:

The fee requirement will change the MGB's policy of accepting complaints filed electronically up to 11:59 p.m. on the deadline date.

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

s. 491 (2) The form referred to in subsection (1) must include:

- (a) the reason the matter is being referred to the Board,
- (b) a brief explanation of the issues to be decided by the Board, and
- (c) an address to which any notice or decision of the Board is to be sent.

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

- No change to s. 491(2) – change is in new sub-sections (3) & (4) and that 491(1) requires complaint to be “in the form prescribed by the Regs”
- The regs (s. 19) overlap and give further specifics on the requirements in s. 491 and s. 492(1) as well as a few additional requirements.

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

s. 491 (3)

In addition to the information described in subsection (2), in respect of a complaint about an assessment for linear property, the form referred to in subsection (1) *must*

- (a) indicate what information on an assessment notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

s. 491(4)

In addition to the information described in subsection (2), in respect of a complaint about an amount of an equalized assessment, the form referred to in subsection (1) *must*

- (a) explain in what respect the amount is incorrect, and
- (b) indicate what the correct amount should be.

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

- Section 19 of MRAC specifies that the form must include “basic” or automatic information such as:
 - ✓ name & contact info for complainant and /or assessed person;
 - ✓ LPAU-ID and municipality in which linear property is found;
 - ✓ The matter for complaint as described in s. 492(1) of the Act (mandatory “drop down” cell that will automatically display choices (a) to (g) from s. 492(1))

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

- Section 19 of MRAC also requires specifics about what element in the assessment calculation is wrong:
- ✓ what information used in the linear property assessment calculation process prescribed by the Minister's Guidelines is incorrect (s.491(3)(a))
- ✓ in what respect that information is incorrect (s.491(3)(b))
- ✓ what the correct information is to be used in the linear property assessment calculation process (s.491(3)(c))
- ✓ The source of that information (i.e. ERCB record type)

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

- Lastly, section 19 of MRAC requires the requested assessment and a detailed issue statement:
- ✓ the requested assessed value, if the complaint relates to an assessment (s. 491(3)(d))
- ✓ The specific issues related to the incorrect information that are to be decided by the MGB and the reasons in support of the complainant's position on those issues (s. 491(2)(a)&(b)).

**Linear Form: Info & Content
(MGA s. 491(2)(3)(4); MRAC s. 19)**

**Forms, Completion Instructions, and
MGA references
– please call Jennifer Chabot
at 780-415-1859**

**Linear Fees: What, When & How
(MGA s. 527.1; MRAC s. 19)**

What?

- Section 527.1(k) prescribes the setting of "...fees payable by complainants, or by parties, intervenors or others appearing before the Board..."
- Section 24 of MRAC specifies that fees are payable by someone wanting to make a complaint or be involved as a party or intervenor and are set out in Schedule 2.

**Linear Fees: What, When & How
(MGA s. 527.1; MRAC s. 19)**

What?

Schedule 2 - Complaint Fees

<u>Category of Complaint</u>	<u>Complaint Fee</u>
Linear property-power generation	Flat fee \$650 per facility
Linear property-other	Flat fee \$ 50 per LPAUID

**Linear Fees: What, When & How
(MGA s. 527.1; MRAC s. 19)**

What?

- Section 24(2) of MRAC also outlines in what circumstances the MGB must refund the fee

s.24(2) If

- a complainant withdraws a complaint on agreement with the assessor designated by the Minister or the Minister, as the case may be, to correct any matter or issue under complaint,
- the Municipal Government Board makes a decision in favour of the complainant, or
- the Municipal Government Board makes a decision that is not in favour of the complainant, but on appeal the Court of Queen's Bench makes a decision in favour of the complainant,

**Linear Fees: What, When & How
(MGA s. 527.1; MRAC ss. 18 & 19)**

When

- Section 18 of MRAC specifies when the fee is due, and what happens if it is late:
- s. 18(1) If a complaint is to be heard by the Municipal Government Board, the complainant must
- complete and file with the administrator a complaint containing the information set out in section 19, and
 - pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed.
- (2) If a complainant does not comply with subsection (1),
- the complaint is invalid, and
 - the Municipal Government Board must dismiss the complaint.

**Linear Fees: What, When & How
(MGA s. 527.1; MRAC ss. 18 & 19)**

How

- Currently, payment will be accepted by cheque only
 - Cheque must be received at either the Edmonton or Calgary offices at or before 4:30 p.m. on the Complaint deadline together with the Complaint form*
 - Cheques must be in the correct amount; shortfalls may result in some complaints not being filed
 - Early payment will be accepted and credited to an account but the same rules apply.
 - Overpayments will be re-imbursed.
- * The practical result is that Complainants will no longer be able to file the complaint at the 11:59th hour on the deadline date.

Linear Fees: What, When & How (MGA s. 527.1; MRAC ss. 18 & 19)

NOTE:

If the fees are not received when the complaint is filed:

- (2) If a complainant does not comply with subsection (1),
 - (a) the complaint is invalid, and
 - (b) the Municipal Government Board must dismiss the complaint.

Hearing Timelines

New legislation results in significant change in timelines.

- 60 days instead of 45 days to file a complaint (MGA s. 491(1)(a)). *The filing deadline date continues to be shown on the assessment notice.*
- 7 days to provide a copy of the complaint to the assessor designated by the Minister;
- MGA s. 494(1) requires the MGB administrator to provide a copy of the complaint to the municipality within 30 days of receiving the complaint.

Hearing Timelines

- MGB process to deal with MRAC s. 20 (a),(b) and (c), will be to contact all parties, including municipalities, by e-mail, to advise of a complaint submission, and provide a hearing date.

Hearing Timelines

Disclosure Timelines

MRAC s. 21(2) (a),(b) and (c) set out the timelines for disclosure of evidence by the parties:

- 42 days before the hearing by the complainant;
- 14 days before the hearing by the respondent; and
- 7 days before the hearing for the complainant's rebuttal

Hearing Timelines

Disclosure Timelines (cont.)

Abridgement or expansion provisions in MRAC s. 23 provide that the Municipal Government Board may at any time, with the consent of all parties:

- subject to s. 500 of the MGA, may at any time by written order expand the time specified in s. 21(2)(a), (b) or (c).
- A time specified in s. 21(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or documents.

Other Relevant MGA changes

The other changes to the Act will affect both the substance and the procedures for linear property complaints

- Substantive changes affect what issues are argued
- Procedural changes affect how the MGB is to receive, process, hear, and issue decisions on linear complaints

Substantive Changes

Fairness & Equity

Duties of assessors

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

(a) apply the valuation and other standards set out in the regulations, and

(b) follow the procedures set out in the regulations.

- Effect of the "other" standards on linear complaints is not yet known.

Substantive Changes

Fairness & Equity (cont.)

Section 499(3) The Board must not alter

(a) any assessment of linear property that has been prepared correctly in accordance with the regulations...

- Previously the MGB could not alter:

(a) any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality

- Presumably, the change comes about as a result of their being no further property appeals before the MGB; but note no change to s. 293(1) re: equity duties
- It may be that correctness = equity in linear assessment

Substantive Changes

Disclosure

The Contents of disclosure are now specifically spelled out by s. 21 of MRAC. The original written submissions, the response or the rebuttal, must include:

- “the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant/respondent intends to present at the hearing in sufficient detail to allow the respondent/complainant to respond to or rebut the evidence at the hearing”
- Failure to disclose in accordance with the above will result in the exclusion of the evidence according to s. 22 of MRAC

Procedural Changes

Withdrawals & Amended Assessments

Section 305:

- (5) If a complaint has been made under section 460 or 488 about an assessed property, the assessor must not correct or change the assessment roll in respect of that property until a decision of an assessment review board or the Municipal Government Board, as the case may be, has been rendered or the complaint has been withdrawn.

Procedural Changes

Withdrawals & Amended Assessments (cont)

s.305 (6) Despite subsection (5), subsection (1)(b) does not apply if the assessment roll is

- (a) corrected as a result of a complaint being withdrawn by agreement between the complainant and the assessor, or
- (b) changed under section 477 or 517.
- In past years’ MGB PHCs have been used to organize amended assessments for straightforward issues and the MGB staff would follow up by ensuring that withdrawals were received; now the withdrawal will have to be received first.

Procedural Changes

Absence from hearing

s. 495: If any person who is given notice of the hearing does not attend, the Board must proceed to deal with the matter if

- (a) all persons required to be notified were given notice of the hearing, and
- (b) no request for a postponement or an adjournment was received by the Board or, if a request was received, no postponement or adjournment was granted by the Board.
- Previously a discretionary choice where the MGB was satisfied that proper notice of hearing had been given. Criteria for adjournment also specified – s. 27 MRAC.

Procedural Changes

Postponement or adjournment of hearing

MRAC s. 27:

- (1) Except in exceptional circumstances as determined by the Municipal Government Board, the Municipal Government 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 500 of the Act, if the Municipal Government Board grants a postponement or adjournment, the Municipal Government Board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted

Procedural Changes

Preliminary hearings – Sections 42-47 MRAT

- One member preliminaries can still be held to deal with procedural, administrative, and non-assessment matters by the MGB on 15 days notice. (ss. 42 & 44)
- Disclosure for the preliminaries must be made in accordance with a 7 day / 7day rule. (s. 45)
- MGB must not hear the prelim matter where it is not on complaint form, not disclosed as per s. 45, or if it relates to info requested by the assessor but not provided. (s. 46)
- Can abridge the hearing notice period, and abridge or expand prelim disclosure on consent of parties (s. 47)
- Note: On consent of parties, MGB may hear ANY matter with one member (s. 42(1)(d) i.e. merit/assessment matter?).

Procedural Changes

Agent Authorization – Section 51 MRAC

An agent authorization form is now required for MGB complaints.

The MGB form will be similar to that in Schedule 4 and will be made available during the complaint period

Note that this must also be filed within the deadline period or the complaint cannot be filed by the MGB.

Procedural/Substantive Changes

Costs of proceedings

Section 501:

The Board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

- The main change here is the mandatory duty on the MGB to consider and order costs where the circumstances fall within those prescribed by the Regulations - s. 52 & Schedule 3 of MRAC

Procedural/Substantive Changes

Costs (cont)

- MRAC Section 52 –**(1) Any party to a hearing before a composite assessment review board or the Municipal Government Board may make an application to the composite assessment review board or the Municipal Government Board, as the case may be, at any time, but no later than 30 days after the conclusion of the hearing, for an award of costs in an amount set out in Schedule 3 that are directly and primarily related to matters contained in the complaint and the preparation of the party's submission.
- (2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:
- (a) whether there was an abuse of the complaint process;
 - (b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process

Procedural/Substantive Changes

Costs (cont.)

MRAC Section 52:

- (3) A composite assessment review board or the Municipal Government Board may on its own initiative and at any time award costs.
- (4) Any costs that the composite assessment review board or the Municipal Government Board award are those set out in Schedule 3
- (7) If the complainant is
- (a) the assessed person of linear property under complaint,
 - (b) an employee or representative of that assessed person, or
 - (c) an agent for that assessed person,
- the assessed person is responsible for any costs awarded by the Municipal Government Board.

Procedural/Substantive Changes

Costs (cont)

MRAC Schedule 3

The Schedule 3 table sets out what it takes to be subject to costs:

- Where the conduct of the offending party warrants it, a composite assessment review board or the Municipal Government Board may award costs up to the amounts specified in the appropriate column in Part 1.
- Where a composite assessment review board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.

Procedural/Substantive Changes

Costs (cont.)

MRAC Section 52 -

- (9) The municipality that files a complaint about an equalized assessment or linear property is responsible for any costs awarded by the Municipal Government Board against an employee or representative of the municipality.
- (10) The Minister is responsible for any costs awarded by the Municipal Government Board against an employee or representative of the Minister.

Procedural/Substantive Changes

Costs (cont)

MRAC Schedule 3

Part 1 - Action committed by a party – speaks to delay to hearing processes.

Test is whether the conduct of the offending party warrants costs.

Part 2 & 3 – Deals on an item by item basis with the steps taken in a complaint in an effort to reimburse the non-offending party and penalize the offender.

Test is whether a matter was brought forward with no reasonable chance of success; note that costs awards increase with property values.

Procedural/Substantive Changes

Appeals of MGB Decision – Section 506

- Previously there was no appeal of an MGB Decision (former section 506);
- Now there is no “Privative Clause” and a procedure is laid out for appeals to the court of a appeal on questions of law or jurisdiction; likely means less deference to MGB decisions
- Appeals must first meet the threshold test before “leave” to appeal is given (Section 506)
- Note new timelines – 30 days from MGB decision to seek leave vs. 90 days for judicial reviews.
- Decision is either confirmed or cancelled and sent back to the MGB – s.506.1

Other Changes to Note

1. MGA

- Member Training required – s. 487.1, 527.1, & MRAC
- Decisions due within 30 days “from the last day of hearing” or before the end of the tax year (whichever is earlier) – s. 500
- Written decisions due 7 days after decision is rendered (including any dissenting reasons) – s. 505
- Assessor’s for municipalities within which linear property is located may also appeal MGB decisions – s. 506
- No member pecuniary interests – s. 520

Other Changes to Note

2. MRAC

- Section 25 spells out particulars of what decisions must contain – the only real change being the inclusion of dissenting reasons on any issue. Given these requirements, MRAC, s. 26, and the new 30 day deadline for decisions, expect a new written format in 2010.
- Section 26 – specifies what must constitute the record – very similar to what is in the current decision format in most cases. Includes a written list linking the complaint form issues to the evidence given at the hearing. Note: MGB Transcripts?
- Section 28 – Hearing can be by way of written presentation where provided to other party 7 days in advance.
- Section 29 – Independent Legal Advice only.

Summary – Steps to follow post 2010

- File and pay on time (or in advance).
- Make sure the form is complete in all respects.
- Make sure agent authorization is in before the deadline.
- Make sure all of the issues you want to argue are included and specifically explained for every LPAU-ID (especially where more than one issue).
- Make sure you comply with both the procedural and substantive aspects of the new disclosure requirements – for both prelim and merit material exchanges.
- Be aware of arguing irrelevant or new issues and exposure to costs.

Summary – Non-compliance and Consequences

- Complaint not filed in time: MGB must dismiss (s. 499(1)).
- Complaint does not comply with s. 491(1)(2)(3) (form completion): Complaint invalid/MGB must dismiss (s. 499(1) & MRAC s. 18(2)).
- Non payment/Late Payment of fee: Complaint invalid/MGB must dismiss (MRAC s. 18(2)).
- Not including an issue on the complaint form: MGB must not consider (MRAC s.22; s.46); Costs (MRAC Schedule 3 – Part 1).
- Failure to disclose evidence in accordance with s.21 MRAC: MGB must not consider (MRAC s.22; s.46).
- Failure to provide DLA with assessment info: MGB must not consider evidence relating to that information (MRAC s.22; s.46).
- Failure to file agent authorization: Complainant may not file complaint (s.51)

Final Words

Best Bet:

Avoid the new consequences by using the 60 day filing period to:

- Investigate the merits of your complaint
- Talk with the DLA about the assessment
- Talk with the MGB staff about your assessment and any filing questions:
Alexander Witt– 780-422-8648
Jennifer Chabot– 780-415-1859
- File and pay early

QUESTIONS & COMMENTS

Linear forms and PP presentation:
http://www.municipalaffairs.alberta.ca/abc_mgb_forms.cfm

Assessment services:
<http://www.municipalaffairs.alberta.ca/>

Click on Business Units/Local Government Services/Assessment Services

THANK YOU!