

Citation:

File Number: 18-073-P, 18-074-P, 18-075-P,
 18-076-P, 18-078-P
Assessment Year: 2017
Assessment Type: Annual New

Between:

Regional Municipality of Wood Buffalo “Applicant”
 and
Altus Group on behalf of Various Owners “Respondent”

**COST DECISION OF
 Lori Bonnett, Presiding Officer**

BACKGROUND

[1] The parties were scheduled to appear before the Board via telephone conference on June 21, 2018, with regard to the 2017 assessment of the five (5) properties owned by five (5) different corporations. The matters before the Board was a preliminary application by the Applicant to dismiss the Complaints filed for the four (4) properties as they were filed beyond the complaint deadline.

Assessment Roll Number	50500960
Civic Address	302A Parsons Creek Drive, Fort McMurray
Owner	LREIT Holdings 44 Corporation
File Number	ARB 18-076-P

Assessment Roll Number	50600000
Civic Address	262 Powder Drive, Fort McMurray
Owner	LREIT Holdings 45 Corporation
File Number	ARB 18-075-P

Assessment Roll Number	50663480
Civic Address	108 Loutit Road, Fort McMurray
Owner	LREIT Holdings 28 Corporation
File Number	ARB 18-074-P

Assessment Roll Number	50663470
Civic Address	101 Loutit Road, Fort McMurray
Owner	LREIT Holdings 13 Corporation
File Number	ARB 18-073-P

[2] The Board made its determination and an Order on this preliminary application was issued. During the Application, the Respondent requested costs be awarded to the Respondent. The Board then requested that each party have an opportunity to provide the Board with its written submissions as to costs.

ISSUE(S)

[3] The following issue was the basis of the cost hearing:

Should costs be awarded against the Respondent for bringing an application that the Complaints be dismissed because they were not filed in time, and if so, in what amount?

CARB'S ANALYSIS

Legislative Authority, Requirements and Considerations:

[4] The *Municipal Government Act*, RSA 2000, c M-26 (“MGA”) provides:

Costs of Proceedings

468.1 A composite assessment review 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.

[5] The *Matters Relating to Assessment Complaints Regulation*, Alta Reg 201/2017 (“MRAC”) provides:

Costs

s. 56 (1) Any party to a hearing before a composite assessment review board of 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 submissions.

(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.

(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.

Schedule 3 of MRAC reads:

TABLE OF 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.

Category	Assessed Value			
	Up to and including \$5 million	Over \$5 million up to and including \$15 million	Over \$15 million up to and including \$50 million	Over \$50 million
Part 1 — Action committed by a party				
Disclosure of irrelevant evidence that has resulted in a delay of the hearing process.	\$500	\$1000	\$2000	\$5000
A party attempts to present new issues not identified on the complaint form or evidence in support of those issues.	\$500	\$1000	\$2000	\$5000
A party attempts to introduce evidence that was not disclosed within the prescribed timelines.	\$500	\$1000	\$2000	\$5000
A party causes unreasonable delays or postponements.	\$500	\$1000	\$2000	\$5000
At the request of a party, a board expands the time period for disclosure of evidence that results in prejudice to the other party.	\$500	\$1000	\$2000	\$5000
Part 2 — Merit Hearing				
Preparation for hearing	\$1000	\$4000	\$8000	\$10 000
For first 1/2 day of hearing or portion thereof.	\$1000	\$1500	\$1750	\$2000
For each additional 1/2 day of hearing.	\$500	\$750	\$875	\$1000
Second counsel fee for each 1/2 day or portion thereof (when allowed by a board).	\$250	\$500	\$750	\$1000
Part 3 — Procedural Applications				
Contested hearings before a one-member board (for first 1/2 day or portion thereof).(i.e. request for adjournment)	\$1000	\$1500	\$1750	\$2000
Contested hearings before a one-member board (for each additional 1/2 day or portion thereof).	\$500	\$750	\$875	\$1000

Parties Submissions- it was the Respondent who requested that the Board consider an award of costs at the Preliminary Hearing so the Respondent's submissions are set out first as they are the applicant with respect to the costs application.

RESPONDENT:

[6] The Respondent provided the Board with its submissions and legal brief containing 81 pages [Exhibit R-1]. The submissions were in response to the Applicant's preliminary application to dismiss the Complaints, and within the submissions the Respondent's requested that the Board consider an award of costs in its favour.

[7] The Respondent pointed out that the Board's jurisdiction to award costs was contained in s. 468.1 of the *MGA*. The Respondent requested that the Board consider an award of costs under Part 3 of Schedule 3 of *MRAC*. The Respondent noted that Part 3 of Schedule 3 indicates that where there is a procedural application which is a contested hearing, a composite review board (*CARB*) may award costs up to the amount specified in the appropriate column of Part 3 – Schedule 3 - Procedural Applications.

[8] The Respondent stated that the application for costs relates to roll numbers 50663470, 50663480, 50600000, 50500960 and 50513000.

[9] The Respondent indicated this application was a result of the Applicant bringing a preliminary application to this Board to dismiss the Respondent's complaint, stating it was filed beyond the timeframe permitted for filing the Complaint.

[10] The Respondent submitted that the Assessment form clearly stated that the Complaint must be "postmarked or received on or before April 30, 2018 at 4:30 p.m."

[11] The Respondent submitted that neither the legislation nor the complaint form defines 'filing'.

[12] The Respondent further submitted that the Applicant had no basis for bringing this application and is estopped from relying on an argument that the Complaint filing was outside of the filing time frame when it provided clear instructions on how and when the Complaints could be filed.

[13] The Respondent submitted that the Complaint was postmarked within the specified time frame and that the Applicant agreed with the date and time of the postmark.

[14] As a result of the foregoing, the Respondent submitted that the Applicant's application to dismiss the Complaint was unnecessary and without merit and costs should be awarded to the Respondent.

APPLICANT:

[15] The Applicant submitted written submissions of one page dated August 9, 2018 [Exhibit A-1].

[16] The Applicant stated given the plenitude of legislation changes that came into effect for the 2018 taxation year, the *Municipal Government Act* prescribed a mailing date and a notice of assessment date. Based on the legislation, the complaint deadline was April 30, 2018 and the Complaints were received on May 2, 2018.

[17] The Applicant believed that the Complaints were received after the deadline of April 30, 2018 and therefore no costs should be awarded.

[18] Further, the Applicant stated that it robustly believed that the Complaints were received after the April 30, 2018 deadline and that to award costs would be punitive and overzealous.

BOARD'S FINDINGS AND REASONS:

[19] The Board acknowledges that there was no dispute between the parties that the Complaints were postmarked on or before April 30, 2018 at 4:30 p.m.

[20] The Board further finds that the instructions by the Applicant for 'filing' the complaint were on the Assessment Notices as well as on the Applicant's website.

[21] The Board finds that the Applicant's submissions are without merit giving the instructions on the Assessment Notice and on the municipality's website with respect to the complaints. With the date and mechanism set out clearly on the website and on the Assessment Notice, the Board finds that the Respondent had every right to rely on such instructions.

[22] The Board finds that given the instructions on the Assessment Notice and on the Applicant's website, it was unnecessary and without merit to then bring an application to dismiss the Complaints for not being received by the municipality on time.

[23] As a result of the foregoing, the Board awards costs in favor of the Respondent in the sum of \$1,500.00.

DECISION

[24] The Applicant is to pay the Respondent costs in the sum of \$1,500.00.

[25] It is so ordered.

[26] The decision of the Composite Assessment Review Boards is final and binding on all parties, subject only to appeal to the Court of Queen's Bench on a question of law or jurisdiction with respect to the decision in accordance to section 470 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 21st day of December 2018.

FOIP s.17(1)

A large black rectangular redaction box covers the majority of the page content below the signature line. The text "FOIP s.17(1)" is written in red at the top left corner of this redacted area.

Lori Bonnett, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
R-1	Respondents Brief
A-1	Applicants Brief