

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo 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:

Regional Municipality of Wood Buffalo (RMWB) – Complainant

- and -

Mancal Industrial Developments Inc. Represented by Altus Group – Respondent

BEFORE:

B. Hisey, Presiding Officer

A. Hawkins, Board Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A teleconference was convened on June 27, 2019 at 9:30 am with a one-person panel for the Regional Municipality of Wood Buffalo Composite Assessment Review Board in the Province of Alberta to consider a complaint about the assessment of the following property:

Assessment Roll Number	50527310
Civic Address	101 - 805 Memorial Drive
Owner	Mancal Industrial Developments. Inc.
File Number	ARB 19-026-P

PROCEDURAL MATTERS

The CARB derives its authority to make decision under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (MGA).

[2] The parties confirmed that they had no objections to a one-member panel, or the Board member.

[3] Both parties requested that the evidence, submissions and arguments of this file and roll number 50583490 be carried forward. The Board agreed.

[4] The Presiding Officer confirmed no bias in relation to the matters.

[5] The documents confirmed as submissions of the parties consisted of the Complainant's Brief marked as exhibit C1 with 22 pages. The Respondent submitted copies of several emails to the Board on June 26 which did not meet the timelines requirements under section 43, *Matters Relating to Assessment Complaints* (MRAC). The Complainant did not consent to an abridgement of time to allow the submissions into evidence as required under section 45 of MRAC.

PRELIMINARY ISSUE

[6] Should a hearing be held to consider the merits of an assessment given the Request for Information (RFI) was not provided for the subject property pursuant to sections 295(1) and 295(4) of the MGA.

Position of the Respondent

[7] The Respondent did not submit written documentation for evidence in accordance with the MGA or MRAC. Verbal information provided suggested a recent office relocation had hindered the ability for the owner of the subject property to respond to the RFI.

[8] The Respondent also stated that several attempts had been made to contact the assessor's office, but no response was received.

Position of the Complainant

[9] The Complainant stated that the Respondent failed to provide information in response to a section 295(1) request under the MGA.

[10] The Complainant suggested that the original 2018 Request for Information was sent on March 29, 2018. A reminder letter dated May 16, 2018 was provided as evidence of the assessors second notice for information. The letter quoted section 295(4) of the MGA which states that no person may make a complaint in the year following the assessment year under section 460 if the person has failed to provide the information requested under section (1) within 60 days of the date of the request. The final date for submission was June 8, 2018.

[11] Three prior tribunal decisions, PRCARB 40-2017 from the City of Leduc, ARB Order #0238/01/2017, and ARB Order #0238/01/2018-J were provided to support the Complainant's request to disallow a merit hearing to proceed on the subject property.

DECISION

[12] It is the decision of the Composite Assessment Review Board to deny the Complainant's request to dismiss the assessment complaint and directs that the merit hearing proceed.

REASON FOR DECISION

[13] The factual questions relevant to determining a section 295 request include:

- whether the assessor sent a request in a proper, intelligible and reasonable form having regard for all the circumstances;
- what information was provided, and what was done with that information;
- whether the information was necessary; and
- whether the taxpayer complied with the request.

(Alberta v Amoco Petroleum Ltd, 2000 ABCA 252 at para 4)

[14] The Assessor sent both a request and a reminder, as confirmed by the Assessor's May 16, 2018 letter. It is less clear whether the request made it to the Respondent's office. While the evidence on this point was limited, the Board has no reason to doubt the Respondent's oral evidence that it recently relocated its office, and that it made several unanswered attempts to contact the Assessor. In this case, the Board does not fault the Assessor for failing to provide documentary confirmation of this oral evidence. The simultaneous disclosure procedure under MRAC section 43 coupled with the potential to exclude undisclosed evidence under section 44 limits the opportunity to file written responses before the hearing. While many section 295 applications may be more straightforward, in this instance, the Respondent was left with no ability to submit additional information, and it would be unfair to discount the Respondent's evidence on this basis.

[15] Having regard for the facts described above, the Board finds on a balance of probabilities that the request was misdirected and not received; further, the Respondent made reasonable efforts to discover the request and comply with it. It would be unreasonable to expect the Respondent to comply with an RFI it did not receive, and inappropriate to bar its right to file a complaint under such circumstances. (*Calgary v Northland Properties Ltd.*, 2003 ABQB 668).

[16] Finally, the Board observes that the Assessor gave no evidence or explanation as to why the information it requested was reasonable or necessary to perform the duties and responsibilities of an assessor. The Board's finding about receipt of the RFI makes these questions redundant; however, the Complainant is responsible for showing the conditions under section 295(1) have been met and has not done so here.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 29th day of July, 2019.

FOIP s.17(1)



B. Hisey, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
C1 - 22 pages	Complainant's Brief

APPENDIX B

REPRESENTATIONS

Oral Evidence by:	Capacity
<i>Respondent</i> Kam Fong	Agent – Altus
<i>Complainant</i> Holly Stinson	Assessment Branch Regional Municipality of Wood Buffalo

APPENDIX C

LEGISLATION

The *Municipal Government Act*, RSA 2000, c M-26, states:

295(1) A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

295(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of designated industrial property, under section 492(1) about an assessment if the person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

Matters Relating to Assessment Complaints Regulation, 2018

43(2) If a complaint is to be heard by a one-member composite assessment review board panel, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 7 days before the hearing date,
 - (i) disclose to the respondent and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
- (b) the respondent must, at least 7 days before the hearing date,
 - (i) disclose to the complainant and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the complainant and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence.

- 44 A one-member composite assessment review board panel must not hear
- (a) any matter in support of an issue that is not identified on the complaint form, or
 - (b) any evidence that has not been disclosed in accordance with section 43.

- 45(1) A one-member composite assessment review board panel may at any time, with the consent of all parties, abridge the time specified in section 42.
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