

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 -

Ogilvie LLP (for Surefire Properties (Krista) Inc.) – Respondent

BEFORE:

Member:

Harold Williams, Presiding Officer

Staff:

Anita Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing before a one-member panel was convened on August 14, 2019 by teleconference at the Municipal Government Board offices, 1229 – 91 Street, Edmonton for the Regional Municipality of Wood Buffalo in the Province of Alberta to consider whether an assessment complaint had been filed on time for the following property:

Assessment Roll Number	40522250
Civic Address	108 Elmore Drive Fort McMurray, AB
Owner	Surefire Properties (Krista) Inc.
File Number	ARB 19-076-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 the composition of the Board.

[3] The Board confirmed it had no bias in relation to the matters.

PRELIMINARY MATTERS

Issue

[4] **Was the assessment complaint for the subject property described above, filed on time?**

[5] The Complainant requested a hearing to determine whether the assessment complaint for the subject property was filed on time.

[6] The Complainant provided an evidentiary document of 52 pages (Exhibit C1) which contained a copy of an assessment complaint for the subject property, date stamped as received by Assessment Review Board and RMWB on July 11, 2019.

[7] The document also contained a copy of the assessment notice for the subject property which showed an assessment date of February 28, 2019 and a final complaint date of April 29, 2019.

[8] Included in the document were excerpts from Alberta legislation regarding complaint deadlines, and copies of previous Board Orders where late complaints were dismissed, as well as a copy of the Alberta Queen's Bench "Wood" decision (2012 ABQB 399) dealing with assessment complaint deadlines.

[9] The document further contained copies of e-mails between RMWB and the subject property owner, Surefire Properties (Krista) Inc., regarding market value of the subject property and filing of assessment complaints.

[10] The Complainant explained that no agreement was reached between the parties as to the market value of the subject or revision to the subject assessment.

[11] The Complainant argued that instructions for making an assessment complaint were included with the assessment notice and that the deadline date for making a complaint was shown on the notice; therefore, it was clear as to how to make a complaint and by what date.

[12] The Complainant further argued that the complaint should be dismissed because if it were not it would be a disruption to the tax base of the municipality and set a possible precedent where complaint deadlines would be ignored by property owners in the future.

[13] The Respondent represented by Ogilvie LLP law firm responded to the late complaint allegation.

[14] The Respondent provided a 71 page evidentiary document (Exhibit R1) containing copies of several e-mails between the parties discussing the market value of the subject property, information about the sale of the subject property, and information regarding assessment complaints.

[15] The document also contained excerpts from Ontario Court of Justice (General Division) cases dealing with estoppel in terms of actions taken by municipal jurisdictions that disadvantaged property owners and excerpts from the Alberta Court of Appeal “Boardwalk “ decision concerning fairness and natural justice in terms of municipal actions in assessment complaints.

[16] The Respondent argued that the late complaint for the subject property was a matter of “induced error”. They argued that the copies of the e-mails in evidence show that there was ongoing discussion about the assessment of the property by the parties before and after the complaint deadline and that this ongoing discussion lead the property owner to believe that there would be a resolution to the matter in the form of an assessment adjustment.

[17] The Respondent argued that the instructions for making an assessment complaint, included with the assessment notice, indicates that if the property owner is not able to resolve their issue then a complaint can be made. They argued that the e-mail copies show that a discussion to resolve the issue was still ongoing at the time of complaint deadline leading Surefire to believe that a complaint might not be necessary.

PRELIMINARY DECISION

[18] The assessment complaint for the subject property was filed late and is dismissed.

REASONS FOR THE PRELIMINARY DECISION

[19] The Board reviewed the evidence and arguments provided by both parties.

[20] In terms of the copies of e-mails between the parties the Board finds them to be generally positive and professional and relating directly to the issue of the assessment of the subject property. However, there is no indication of an agreement between the parties as to an adjustment for the assessment.

[21] In terms of the previous Board orders provided by the Complainant, the Board may review these orders but is not bound by them.

[22] In terms of the caselaw (Court Decisions) provided by both parties, the Board must have regard for these decisions where they closely align with a matter before the Board.

[23] The Board finds some alignment with the “Wood” decision in regard to the Board having no legislative jurisdiction to override complaint deadlines. (MGA s. 467(2))

[24] The Board finds the “Boardwalk” decision does discuss fairness and natural justice but is more aligned with a matter of providing property information and the ability to make a subsequent complaint. (MGA s. 295(4)). While it shows the Assessor has a duty to deal fairly with taxpayers, it does not imply the ARB has authority to extend statutory assessment complaint filing deadlines.

[25] The Board considered the estoppel principle outlined in the Ontario court cases supplied by the Respondent. However, these cases are distinguishable, since they are Ontario cases concerning limitation periods for statements of claim alleging municipal liability for personal injury – not with assessment complaint deadlines in Alberta. The Alberta Assessment Complaint regime was discussed in *Wood*, where - after considering the statutory context - the Alberta Court of Queen’s Bench stated:

So this is a process that is neither vague nor loose - the objective is to consider prescribed issues only (s. 460(5)), render a timely decision with reasons (s. 468(1)) and send it to notified persons within 7 days of the decision (s. 469). The wording of the time limit must be interpreted in this context. (para 55)

[26] It is true *Wood* leaves open the possibility that “the ARB might extend a deadline for reasons of natural justice in very exceptional cases” (para 79). Arguably, assurance from the Assessor that the complaint deadline would not apply might qualify as such an exception; however, the communication between the Assessor and Surefire did not rise to that level.

[27] In fact, the Board finds the instructions to make an assessment complaint and the complaint deadline included with the assessment notice were clear. Not only does the assessment notice indicate the deadline clearly, it states in capital letters that complaints cannot be submitted after

4:30 on April 29, 2019, and goes on to explain the consequences of missing the deadline. The instructions under the heading “what to do if you do not agree with your assessment” also state, “if you are unable to resolve the issue after speaking with an Assessor, and wish to pursue the matter further, you must submit a complaint form and appropriate fee to the Clerk of the Assessment Review Board no later than 4:30 pm on April 29, 2019.” Against this context, it is unreasonable to interpret the assessor’s statements that Surefire could file a complaint if unable to negotiate an agreement as implying it could still file a complaint after the deadline provided negotiations were ongoing.

[28] Ultimately, no agreement as to adjustment to the assessment was reached by the parties. The decision not to make an assessment complaint until after the deadline had passed was a considered decision by the property owner.

[29] It is so ordered.

[30] The decision of the Composite Assessment Review Boards is final and binding on all parties. This decision may be judicially reviewed by the Court of Queen’s Bench pursuant to Section 470(1) of the *Municipal Government Act, RSA 2000, c M-26*.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this

9th day of September 2019.

FOIP s.17(1)



Harold Williams, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
C1	Complainant's Submission (52 pages)
R1	Respondent's Submission (71 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
Mike d'Alquen	Counsel for Municipal Government Board
Barry Campbell	Assessment Supervisor, Regional Municipality of Wood Buffalo
Bruce Findlay	Surefire Properties (Krista) Inc.
Kevin Haldane	Ogilvie LLP, representing Sunfire Properties (Krista) Inc.