



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:

LREIT Holdings 44 Corporation; LREIT Holdings 28 Corporation; LREIT Holdings 45 Corporation; and LREIT Holdings 13 Corporation – **Respondent on Application/Complainants**

- and -

Regional Municipality of Wood Buffalo (RMWB) – **Applicant on Application/Respondent**

BEFORE:

Lori Bonnett, Presiding Officer

Present:

Respondents on Application/Complainants

Brent Folden – Agent, Altus Group, representative of the Respondents on Application/Complainants

Rebecca McNeil – Agent, Altus Group, representative of the Respondents on Application/Complainants

Brian Dell – Solicitor for Altus Group

Applicant on Application/Respondent:

Barry Campbell – Assessor for RMWB

Staff:

Sonia Soutter, Clerk

For simplicity, this Order will refer to the parties as Applicants and Respondent.

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A hearing was convened on via telephone to consider a complaint about the assessment of the following properties:

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

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.

PRELIMINARY MATTERS

Issue

[2] The only issue before the Board on this matter was whether the complaints (as set out in paragraph [1] herein) were filed within the proper time?

Position of the Applicant

[3] The RMWB submitted that section 284(4) of the Municipal Government Act (*MGA*) provides that the complaint deadline means 60 days after the notice of assessment date.

[4] The RMWB pointed out in Tab 3 of Exhibit A-1, the certificate of sending assessment notices for the RMWB was February 20, 2018. Based on the publication from the Alberta Municipal Affairs setting out the complaint date schedule for 2018 [Tab 4 of Exhibit A-1], when the assessment notices were sent on February 20, 2018, the notice of assessment date is February 28, 2018 and the complaint date is Sunday, April 29, 2018. Given that the complaint date is a Sunday, the deadline then falls to the Monday, being April 30, 2018.

[5] The RMWB further submitted that section 467 (2) of the *MGA* provided that an assessment review board must dismiss a complaint that was not made within the proper time.

[6] The RMWB accepts that the complaints were postmarked on April 27, 2018 prior to 4:30 p.m.. However, as RMWB submitted the complaints were not received until five (5) days later which was outside the legislated time frame for complaint deadline.

[7] The RMWB provided a number of other CARB decisions that support its position that the complaints were dismissed when the complaint was received post the complaint deadline.

Position of the Respondents

[8] The Respondents submitted that the website for the RMWB provided a number of questions and answers with respect to the filing of complaints. One of the questions was "What is the complaint deadline?". The response on the RMWB's website was: "The original complaint form and accompanying filing fee must be postmarked or received on

or before April 30, 2018 at 4:30 p.m. Faxed complaints will not be accepted.”. [Exhibit R-1, p. 9].

[9] The Respondents reiterated that there was no dispute between the parties that the complaints were postmarked on April 27, 2018 prior to 4:30 p.m. The information in the disclosure package for these complaints is incorrect. The Clerk of CARB corrected this information during the hearing and the parties acknowledge and agree that the complaints for this matter were postmarked on April 27, 2018.

[10] Further, the Respondents provided a copy of the 2018 Annual Property Assessment Notices (Assessment Notice) for each of the four (4) roll numbers set out in paragraph [1] herein and they each provided the following statement on the Assessment Notice [Exhibit R-1, p. 15]:

... If you disagree with any of the assessment information on this notice, you have the right to submit an Assessment Complaint with the Clerk of the Assessment Review Board (see reverse for contact information) by 4:30 p.m. on April 30, 2018.

On the reverse of the notice, [Exhibit R-1, p. 16] paragraph 6 stated as follows:

6. When is the Assessment Review Board Complaint deadline?

Applicable forms accompanied by the appropriate filing fees must be postmarked or received on or before 4:30 p.m. on April 30, 2018.

[11] The Respondents submitted that the specific, very clear instructions, both on the RMWB’s website and on the Assessment Notice, govern how the complainant must file their complaint.

[12] The Respondents agrees that section 461 of the *MGA* provided a complaint must be filed with the Assessment Review Board not later than the complaint deadline. While both the *MGA* and Matters Relating to Assessment Complaints Regulations (*MRAC*) speak to a complaint being filed, there is no definition of what constitutes ‘filing’ in either pieces of legislation nor on the prescribed complaint form.

[13] As a result of the *MGA*’s silence on the issue of what constitutes ‘filing’, the RMWB determined that the complaint could be filed in either of two (2) ways which were set out on the complaint form and on the website being a) physical delivery to the Clerk; or b) by having the complaint mailed to the Clerk prior to the complaint deadline.

[14] The instructions specifically provided by the RMWB do not contradict the

provisions of the *MGA* or the regulations, but yet they are specific and the taxpayers/complaints have a right to rely upon those specific instructions when filing a complaint.

[15] As a result of the foregoing, the Respondent's application to strike the complaints should be denied, and merit hearings should be scheduled. The Respondents further request that costs be awarded to them.

DECISIONS ON PRELIMINARY ISSUE

[16] It is the decision of the CARB that the Complaints as set out in paragraph [1] herein were filed within the time frames as specified by the RMWB as they complied with the Municipalities' instructions by being postmarked or received on or before 4:30 pm on April 30, 2018 and therefore the Clerk of the CARB should proceed to set down these matters for merit hearings.

[17] The Respondents requested costs be awarded to them. The parties are to have their respective submissions regarding costs to the Clerk of the CARB for RMWB on or before the end of the business day on August 9, 2018 for consideration by this Board.

REASONS ON PRELIMINARY DECISION

[18] In coming to its conclusion, the Board has reviewed carefully the provisions of the *Municipal Government Act* ("MGA"), the *Matters Relating to Assessment Complaints Regulation* ("MRAC") and the *Matters Relating to Assessment and Taxation Regulation* ("MRAT") as well as all of the materials and cases provided by both the Applicant and the Respondent.

[19] There was no dispute between the parties as to when the complaint forms were postmarked. The Applicant acknowledges that the complaints were postmarked on April 27, 2018,

[20] Section 461(1) of the *MGA* states that a complaint must be filed with the assessment review board.. not later than the complaint deadline. Section 461(1.1) of the *MGA* states that "A complaint filed after the complaint deadline is invalid."

[21] Sections 308 and 309 of the *MGA* establishes how and when the assessment notices

must be sent out by the assessors along with the content of such assessment. There is no issue here with respect to the timelessness or the content of the assessment notices.

[22] The Applicant provided other board decisions in support of its application along with a Court of Queen's Bench decision by Justice Hillier *Edmonton (City) v. Assessment Review Board of the City of Edmonton*, 2012 ABQB 399. The 2012 ABQB can be distinguished on its facts as the question before the Court on this matter was whether the assessment review board had the jurisdiction to extend the legislated time for receipt of the complaint. The matter before this Board is not a question of extending the time frames set out in the *MGA*, but rather interpreting whether the 'filing' occurred on time. As pointed out by the Respondent, 'filing' is not defined within the *MGA* or in the regulations, nor has any case law been presented that would assist the Board in the determination of this question. The other board decisions included in the Applicant's package are all similar to the 2012 ABQB in that the issue was questions of extension of the filing period as opposed whether the 'filing' occurred on time or put another way, what constitutes 'filing'.

[23] The Board was presented by the Respondent with credible evidence setting out the specific filing instructions from the RMWB in two (2) different places, one being the RMWB's website and the second being the Notice of Assessment, which state that 'filing of the complaint' can occur by being postmarked or received on or before 4:30 pm on April 30, 2018. As previously stated, the *MGA* and the applicable regulations are silent as to what constitutes 'filing'. In the Board decision of the *Robinson v. Lethbridge (City)*, [2001] A.M.G.B.O. No. 73 at par. 37 to 40, the municipality provided a public notice by way of advertisement that complaints received or postmarked prior to a specific time and date will be accepted. The municipality clearly indicated that it is acceptable to post mark the complaint on the last day it is to be file. The MGB determined in the *Robinson* decision that the municipality cannot then rely on the argument that the complaint had to be filed in the office of the municipality by that same date when it gave clear instructions that a complaint postmarked by the final day was acceptable.

[24] It is so ordered.

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

18 day of July 2018.

FOIP s.17(1)

Lori Bonnett, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
"A-1"	Applicant disclosure (67 pages with the Regional Municipality of Wood Buffalo identification and logo on the cover page)
"R-1"	Respondent disclosure (81 pages with the Altus Group identification and logo on the cover page)
"R-2"	Respondent Rebuttal (65 page with the Altus Group identification and logo on the cover page)