

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 – Applicant

- and -

Ryan ULC – Respondent

BEFORE:

Member:

George Zaharia, Presiding Officer

Staff:

Anita Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A teleconference hearing was convened on August 25, 2020 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a preliminary matter regarding a late complaint for the following property:

Assessment Roll Number	71011630
Civic Address	8600 Franklin Avenue, Fort McMurray
Owner	River City Centre Corp.
File Number	ARB 20-047-P

PROCEDURAL MATTERS

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

[3] The parties confirmed that they had no objections to the composition of the Board.

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

PRELIMINARY MATTERS

[5] There were no preliminary matters.

ISSUE

[6] Was the complaint for roll number 71011630 filed in time so as to proceed to a merit hearing, or should the complaint be dismissed for being filed late?

POSITIONS OF THE PARTIES

Position of the Applicant

[7] It is the position of the Applicant that the complaint was filed twenty-one days after the complaint deadline, and it provided a copy of the complaint form that was date stamped by the Assessment Review Board as June 22, 2020.

[8] The Applicant provided a series of dates at which time specific events took place or Ministerial Orders were issued:

- a) January 20, 2020: Annual property assessment notices were mailed
- b) January 28, 2020: Notice of assessment date
- c) March 30, 2020: Filing deadline for 2020 assessment complaints
- d) March 31, 2020: Ministerial Order MSD:022/20 was issued
- e) April 17, 2020: Ministerial Order MSD:036/20 was issued
- f) April 17, 2020: Ministerial Order MAG:014/20 was issued

The Applicant provided information about the Ministerial Orders and how these orders impacted the filing of complaints.

[9] The Applicant directed the Board to Point number 1 of Ministerial Order No. MAG:014/20 issued April 17, 2020 that directed:

“The complaint deadline pursuant to Section 284(4) of the Municipal Government Act, for the assessment notice with a notice of assessment date that falls on or after January 31, 2020 is extended to July 1, 2020 or 60 days from the notice of

assessment date, whichever time is later.”

The Applicant explained that Point number 1 of the Ministerial Order did not apply to the subject complaint in that the notice of assessment date is January 28, 2020, three days prior to the January 31, 2020 notice of assessment date established in the Ministerial Order.

[10] The Applicant also directed the Board to Point number 8 of Ministerial Order No. MAG:014/20 that directed:

“Anything that, under normal timelines pursuant to parts 9, 10, 11, 12 of the Municipal Government Act and its associated regulations, would have been required to be done between the period of March 25, 2020 and the date this Order was signed, which as a result on Ministerial Order MSD 022/20 was not done, and which is not otherwise addressed in this Order, must be completed no later than May 31, 2020.”

The Applicant explained that Part 9 of the MGA is the legislation for the assessment of property and that Part 11 of the MGA legislates Assessment Review Boards, therefore Point number 8 describes the deadlines for assessment complaints. Since the original complaint deadline was March 30, 2020 a date which falls within the timeframe stated in the Ministerial Order, then the complaint deadline for the subject complaint was May 31, 2020, amended to June 1, 2020 since May 31, 2020 was a Sunday.

[11] As a result of the Ministerial Order, the Municipality placed an undated notice on the front of the municipal hall advising that the complaint deadline was 4:30 p.m. June 1, 2020.

The Applicant provided two emails that had been sent from the Assessment Review Board (ARB) to the Respondent, both addressing the June 1, 2020 complaint deadline date.

- a) The first email sent April 28, 2020 from the ARB to the Respondent, advised that the ARB was now accepting complaint filing fees and that the complaint deadline had been altered by Ministerial Order NO. MAG:014/20 to 4:30 p.m. June 1, 2020.
- b) The second email sent June 30, 2020 from the ARB to the Respondent, reminded the Respondent of the April 28, 2020 email that had set the complaint deadline as June 1, 2020 and *“that any further information on this matter will need to be submitted for consideration during the Preliminary Hearing”*.

[12] The Applicant provided a copy of an email sent by the Supervisor of the assessment department dated June 23, 2020 to the Assessment Review Board seeking documentation that extended the complaint deadline from March 30, 2020 to June 1, 2020.

[13] The Applicant provided four ARB decisions, three of which were from the Regional Municipality of Wood Buffalo and one from Flagstaff County, that all dismissed late complaints. As well a decision of the Alberta Court of Queen's Bench was provided where the Judge overturned an ARB decision to allow a late complaint to go forward referencing s. 467(2) of the MGA that mandates that the ARB must dismiss a complaint that was not made within the proper time.

[14] The Applicant described two consequences if the complaint was allowed to proceed to a merit hearing.

- a) Allowing this late complaint to proceed to a merit hearing would cause undue unfairness to other property owners in the municipality who may wish to appeal their assessments past the complaint deadline.
- b) The tax base of the Municipality would be threatened. In May, the tax rate bylaw is passed which allows for losses due to assessment complaints, thereby jeopardizing the finances of the Municipality.

[15] In conclusion, based on the legislation, prior Board decisions, the Court of Queen's Bench decision, and the evidence provided, the Applicant requested the Board to dismiss this complaint.

Position of the Respondent

[16] The Respondent provided a timeline of events commencing March 30, 2020 as outlined in the following:

- a) On March 30, 2020, the original complaint deadline, the Respondent attempted to file complaints for two properties in the Regional Municipality of Wood Buffalo (RMWB). In response, the Respondent was informed that the complaint deadline had been extended to October 1, 2020 as per Ministerial Order NO. MSD:022/20. Since the complaint fee could not be processed at the time, the complaints were retracted so that they could be successfully filed at a later time.

- b) On April 23, 2020, the Respondent contacted the RMWB ARB to see if there was any update on the appeal deadline due to the second Ministerial Order NO. MAG:014/20 that changed the complaint deadline from October 1, 2020 to July 1, 2020. The response that the Respondent received informed that the complaint deadline date had been altered by Ministerial Order NO. MAG:014/20 to 4:30 p.m. on June 1, 2020. This Ministerial Order stated that *"The complaint deadline pursuant to Section 284(4) of the Municipal Government Act, for the assessment notice with a notice of assessment date that falls on or after January 31, 2020 is extended to July 1, 2020 or 60 days from the notice of assessment date, whichever time is later."* The Respondent admitted that the June 1, 2020 complaint deadline was misread as July 1, 2020.
- c) The Respondent provided its interpretation of the intent of Ministerial Order number MAG:014/20. *"The intent of the Ministerial Order was that the NOA's that had dates earlier than January 31, 2020 had already met their initial complaint deadlines, such as Calgary, Edmonton, and Red Deer. RMWB was not able to meet their initial complaint deadline, therefore the order states 60 days from the NOA date or July 1, whichever is later. July 1 is the later date as the RMWB NOA date is January 28, 2020 and 60 days from then would be March 28."*
- d) The Respondent conceded that miscommunication had occurred relative to the Ministerial Orders, but since the Respondent had attempted to file the complaints and pay the required fees on the initial March 30, 2020 deadline, that the complaints should be allowed to proceed to a merit hearing.

[17] The Respondent provided emails exchanged between the Respondent and the RMWB ARB in chronological order, as follows:

- a) March 11, 2020 at 11:41 a.m. email sent from Respondent to the ARB inquiring about the process of paying the filing fees.
- b) March 11, 2020 at 3:28 p.m. email sent from ARB to Respondent advising how payment can be made and that payments must be received prior to the March 30, 2020 deadline.
- c) March 30, 2020 at 3:15 p.m. email sent from Respondent to the ARB advising that the required documentation for the complaints were attached and that payment would follow immediately via credit payment over the phone, requesting confirmation that the complaints had been received.

- d) March 30, 2020 at 4:07 p.m. an internal email was sent by the person who had been dialoguing with the ARB to other staff members at the Respondent's office advising what the ARB had advised about the extended deadline to October 1, 2020 and that the ARB was not able to process a complaint fee payment. A request was made of the ARB to put this information into an email for the record.
- e) March 30, 2020 at 4:08 p.m. email sent from the ARB to the Respondent that as discussed that afternoon, the deadline to file complaints had been extended by Ministerial Order NO. MSD:022/20 to 4:30 p.m. on October 1, 2020 and that the ARB was still unable to take payment of complaint fees.

[18] The Respondent provided a copy of Ministerial Order NO. MSD:022/20 dated March 31st, 2020, that extended timelines, and specific to this late complaint preliminary hearing, Point number 4 that stated: "*The time for all Municipal authorities, persons or entities to do anything within a certain time period triggered by an event under the Municipal Government Act and its associated regulations as referenced in the attached Appendix 2 is extended to October 1, 2020 such that the time period triggered by the event is deemed to end on October 1, 2020 or to end as specified within the Municipal Government Act and its associated regulations, whichever time is later*". Section 284(4) of the MGA is included in the list of Appendix 2.

[19] Following Ministerial Order NO. MSD:022/02, the Respondent sent an email to the ARB to retract both complaints in light of the extended complaint deadline to October 1, 2020. The Respondent advised that it had retracted the complaints so that at a later date the process could be completed in full when it could submit the complaints and pay the complaint fees.

[20] The ARB confirmed the retraction of the complaints as identified in paragraph 19, advising of two things: 1) since no payment had been made due to the Municipality's inability to process payments no refund is required, and 2) if the Respondent wished to resubmit the complaints, that they must be received by 4:30 p.m. on October 1, 2020.

[21] On April 23, 2020, the Respondent sent an email to the ARB advising that based on updates received from other municipalities across Alberta, that in response to the second Ministerial Order, complaint deadlines had been updated to July 1 or June 1, 2020. The Respondent asked the ARB to confirm its complaint deadline.

[22] In response, the ARB sent an email on April 24, 2020 at 9:38 a.m. that the deadline as per Ministerial Order NO. MAG:014/20 was 4:30 p.m. June 1, 2020.

[23] On the same date at 10:25 a.m. the Respondent sent an email to the ARB asking whether the ARB could process payment of complaint fees.

[24] On April 28, 2020 at 3:19 p.m. the ARB confirmed that it was able to accept payment of complaint fees and reminded the Respondent that the deadline for filing complaints was 4:30 p.m. on June 1, 2020.

[25] The Respondent provided a copy of Ministerial Order NO. MAG:014/20 dated April 17, 2020 highlighting point number 1 that set the complaint deadline to July 1, 2020 that differed from the emails received from the ARB that had advised the deadline was June 1, 2020. The Respondent's interpretation of point number 1 is provided in paragraph 16 c) above. The interpretation concluded with: *"The order does not refer to municipalities selecting their own complaint deadline, which is what the RMWB did by selecting June 1, 2020."*

[26] Following the April 28, 2020 email from the ARB, based on an understanding that the complaint deadline was July 1, 2020, on June 22, 2020 the Respondent tried to complete filing the complaints for roll numbers 71006550 and 71011630 that it had initiated on March 30, 2020.

[27] This led to the Assessment and Taxation department requesting of the ARB that there be a preliminary hearing to deal with the two complaints received after the deadline.

[28] In response to a question from the Applicant regarding point number 8 of Ministerial Order NO. MAG:014/20 the Respondent stated that it had misunderstood point number 8 and was of the opinion that point number 8 did not apply to it. The Respondent spoke of a misunderstanding of points number 1 and 8 which it found confusing. The Respondent continued that it was of the opinion that the intent of the Ministerial Orders was not to disallow complaints but to allow natural justice.

[29] In its closing argument, the Respondent spoke of the complaint deadlines as being a moving target, that it had tried to work with the ARB, and that it would be a procedural unfairness not to allow the complaint to proceed to a merit hearing.

[30] In conclusion the Respondent requested the Board to reinstate the complaint so that it could proceed to a merit hearing.

DECISION

[31] It is the decision of the Board to allow the complaint to proceed to a merit hearing. The Board asks the Regional Municipality of Wood Buffalo Assessment Review Board to

schedule the merit hearing in accordance with the disclosure of evidence rules set out in s. 9 of the *Matters Relating to Assessment Complainants Regulation*, AR201/2017.

REASON FOR DECISION

[32] In coming to its decision, the Board wants to categorically state that it finds that both parties acted in the best interests of the process, and that neither party had any bias in arriving at its position.

[33] What complicated the process was the pandemic referred to as COVID-19 that virtually shut down the economy, and changed the way business, not only provincially, but nationally and internationally, was conducted. This led businesses and governments to revamp/reorganize how they would deal with the public, which in the case of this preliminary hearing, caused the Minister of Municipal Affairs (Minister) to change dates or regulations that dealt with complaint deadlines.

[34] Prior to the pandemic, both parties understood the rules governing the submission of complaints and the deadlines imposed, and prior ARB decisions, along with the Alberta Court of Queen's Bench ruled that if complaints were filed late, legislation provided no discretion to Assessment Review Boards to wave the deadlines. However, when the pandemic hit, it disrupted the flow of events, which caused the Minister to amend the rules.

[35] The Board found that the Respondent fully understood the complaint deadline, set initially by the RMWB as March 30, 2020 based on s. 284(4) of the Municipal Government Act (MGA). Evidence was provided that it had attempted to file the complaints on that date but due to the ARB's inability to receive complaint fees at that time, the complaints were not filed.

[36] Further to paragraph number [34], the Board recognizes that unlike prior ARB decisions, decisions of the Alberta Court of Queen's Bench are binding upon it. However, the confusion that resulted from the series of amendments from successive ministerial orders distinguishes the case now before the Board from that reviewed by the Honorable Mr. Justice S. D. Hillier, where he stated legislated complaint deadlines must be adhered to. That case was rendered under normal conditions and clear legislated deadlines for complaints when our province was not encumbered by a pandemic. Notably, Justice Hillier did not rule out the possibility that the ARB could extend the complaint deadline "for reasons of natural justice in very exceptional cases" (at paragraph 79). The Board finds the very exceptional circumstances anticipated by Justice Hillier do indeed apply now.

[37] The Board found that on a very practical basis, the Municipality extended the deadline for filing complaints for a very reasonable reason: in order to curb the spread of the virus, its offices were closed.

[38] The Minister also took action to extend deadlines, appreciating that the Municipalities across the province were facing a dilemma, by issuing Ministerial Orders to address the problem. Consequently, three Ministerial Orders were issued. The first Ministerial Order NO. MSD:022/20 dated March 31, 2020 extended the complaint deadline to October 1, 2020. The second Ministerial Order NO. MAG: 014/20 dated April 17, 2020 revised the complaint deadline to either July 1, 2020 or May 31, 2020 depending on the date of the assessment notice.

[39] The Applicant supported its position in asking the Board to dismiss the complaint based on the second Ministerial Order NO. MAG: 014/20 dated April 17, 2020. It relied on two points from the order: Point number 1 and Point number 8.

- a) The Board found that not only did Point number 1 change the October 1, 2020 complaint deadline specified in the first Ministerial Order to July 1, 2020, but it also introduced the “notice of assessment date” of January 31, 2020 for the July 1, 2020 complaint deadline to be valid. There was no “notice of assessment date” specified in the first Ministerial Order dated March 31, 2020.
- b) Point number 8 specified that any events that would have had to be completed between the period March 25, 2020 and April 17, 2020 must be completed by no later than May 31, 2020 (since May 31 was a Sunday, the date was changed to Monday June 1, 2020). Since the “notice of assessment date” on the assessment of the subject complaint was January 28, three days before the imposed January 31, 2020 “notice of assessment date” and the original deadline was March 30, 2020, the Applicant interpreted these dates as reason for having the complaint dismissed since it was late.

The Board was not provided with any rationale as to why two Ministerial Orders were issued seventeen days apart, and the reason for the change in the October 1, 2020 complaint deadline to two different complaint deadlines based upon a “notice of assessment date” which was not included in the first Ministerial Order. Without any rationale the Board found the issuing of two Ministerial Orders in a very short time frame to be ambiguous. As to ambiguity, the Board found the email from the Supervisor of the assessment department dated June 23, 2020 to the Assessment Review Board seeking documentation that extended the complaint deadline from March 30, 2020 to June 1, 2020 curious, considering that this email was sent one day after the subject complaint was filed.

[40] Further to paragraph [39], the Board was not persuaded by the Applicant's interpretation for two reasons:

- a) It was absolutely reasonable to extend original deadlines as a result of a pandemic that interrupted normal activities, an action taken by the Minister, and
- b) The overall goal of the Ministerial Orders was to facilitate assessment complaints under the legislated assessment complaint process in the unusual circumstances created by the pandemic. Therefore, the Board cannot believe the Minister would have intended his successive Orders to have the opposite effect – that is, to frustrate the complaint through the confusion produced by shifting deadlines in successive Ministerial Orders.

[41] The Applicant had raised two concerns should the late complaint be allowed to proceed to a merit hearing: 1) this would cause undue unfairness to other property owners in the municipality, and 2) the municipal tax base would be threatened. The Board placed little weight on both of these concerns.

- a) With regards to unfairness to other property owners, the late complaint that is the subject of this preliminary hearing was not as a result of filing a complaint after a legislated deadline as stipulated in s. 284(4) of the MGA. It was deemed late by the Applicant as a result of a “moving deadline” established by the Minister. Initially, the Minister set October 1, 2020 as the complaint deadline in reaction to the pandemic. Just seventeen days later, the Minister issued another Ministerial Order, changing the complaint deadline to either July 1, 2020 or May 31 (moved to June 1 because of a Sunday) 2020 based on whether the notice of assessment date was January 31, 2020 or later, or whether it was prior to January 31, 2020 as was the case with the subject property. The Board has already stated that it cannot believe that the Minister would knowingly exclude property owners from being able to challenge their property assessments. The Board would place weight on the Applicant's concern if the complaint was filed late under normal circumstances, but the pandemic of 2020 has created a circumstance that is far from normal.
- b) With regards to the threat to the municipality's tax base, the Applicant stated that in the month of May the Municipality made an allowance in its financial budget for losses due to assessment complaints. In a normal year, this would be after the complaint deadline, which for 2020, was set at March 30, 2020, and the Municipality would know when it was setting its budget how many complaints had been filed. However, due to the pandemic, the second Ministerial Order that the

Applicant was relying on to have the subject complaint dismissed, would have had complaints filed as late as July 1, 2020. If allowing the subject complaint to proceed to a merit hearing would jeopardize the Municipality's finances, what would the complaints filed by the July 1, 2020 deadline cause?

[42] The Board found that there was no question that the complaint was filed June 22, 2020. This was confirmed by an email that was sent to the Respondent by the Assessment Review Board (ARB) confirming that the complaint had been filed and the ARB provided information regarding the necessary \$650 appeal fee. However, the Board found that the Respondent had initially attempted to file the complaint on the original March 30, 2020 deadline, and if the Applicant had been able to receive the complaint fee at that time, there would have been no need for this preliminary hearing. Had it not been for the pandemic, the complaint would have been filed and the complaint fee paid.

[43] The Board found that it was clear from evidence provided by the Respondent, not disputed by the Applicant, that in early April the ARB was still adhering to the October 1, 2020 complaint deadline established in the first Ministerial Order NO: 022/20.

[44] The Board was provided with evidence that the Respondent had been notified of a change in the October 1, 2020 complaint deadline date to either July 1 or June 1, 2020 prior to the June 1, 2020 deadline. Based on the introduction of a notice of assessment date in point number 1 of Ministerial Order NO. MAG: 014/20, the complaint deadline was set as June 1, 2020 since the notice of assessment date was January 28, 2020. However, the Board found the Respondent to be forthright in stating that it had misunderstood the full impact of the Ministerial Order MAG:014/20 that had introduced two complaint deadlines.

[46] Accordingly, the Board finds enforcing a complaint deadline that had been set twice after the efforts of the Respondent in attempting to file the complaint March 30, 2020 would result in a severe breach of natural justice that could not have been intended under the provisions of the MGA, which set out clear and timely notice.

[47] The Board was persuaded that allowing the complaint to proceed to a merit hearing would comply with natural justice which the Board is obligated to dispense.

[48] 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
2nd day of September 2020.

FOIP ACT s.17(1)

George Zaharia, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
A-1	Applicant's Disclosure (71 pages)
R-1	Respondent's Disclosure (42 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
Megan Willox	Representative for the Respondent
Michelle Pink	Representative for the Respondent
Holly Stinson	Assessor, Regional Municipality of Wood Buffalo and Representative for the Applicant
Barry Campbell	(Observer)

APPENDIX C

LEGISLATION

Municipal Government Act, R.S.A. 2000, c. M-26

Interpretation provisions for Parts 9 to 12

284(1) In this Part and Parts 10, 11 and 12,

- (a) “assessed person” means a person who is named on an assessment roll in accordance with section 304;
- (b) “assessed property” means property in respect of which an assessment has been prepared;
- (c) “assessment” means a value of property determined in accordance with this Part and the regulations;

.....

(4) In this Part and Parts 11 and 12, “complaint deadline” means 60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1). RSA 2000 cM-26 s284; 2007 cA-37.2 s82(17);2007 c42 s3; 2

Complaints

460(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

Fees

481(1) Subject to the regulations made pursuant to section 484.1(q), the council may set fees payable by persons wishing to make complaints or to be involved as a party or intervenor in a hearing before an assessment review board and for obtaining copies of an assessment review board’s decisions and other documents.
