

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) – Applicant

- and -

Altus Group Limited – Respondent

BEFORE:

Members:

George Zaharia, Presiding Officer

Staff:

Anita Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] A teleconference hearing was convened on July 29, 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	50651800
Civic Address	100 Riverstone Ridge
Owner	Stonecreek Shopping Centre Inc.
File Number	ARB 20-048-P

PROCEDURAL MATTERS

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

[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 50651800 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-nine days after the complaint deadline and he provided a copy of the complaint form that was date stamped by the Assessment Review Board as June 29, 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.

[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 stated that it was seeking to have the Applicant's application to not permit the complaint to proceed to a merit hearing dismissed. This application by the Applicant to not allow the complaint to proceed to a merit hearing is made despite Ministerial Order MSD: 022/20 issued on March 25, 2020 setting a new complaint deadline as October 1, 2020, and despite an email from the Assessment Review Board stating that the new deadline for complaints in the Regional Municipality of Wood Buffalo was October 1, 2020.

[17] The Respondent lead the Board through a section on "Interpreting Statutory Provisions" referencing the Supreme Court of Canada where in *Canada Trust Co. v Canada* [2005] S.C.J. No. 56, paragraph #10 "*the Court held that when the words are clear and unambiguous, the context and purpose of the provision should play a lesser role in the interpretative process.*" Three other Supreme Court of Canada decisions were referenced with the Respondent summarizing the decisions in five points, the fifth point being: "*In exceptional cases, where the application of the ordinary rules of interpretation leaves the court with a "reasonable doubt" as to the meaning of a provision of a taxing statute, the doubt will be settled by recourse to the residual presumption in favour of the taxpayer (Quebec Communaute urbaine v Corp. Notre-Dame de Bon-Secours [1994] 3 S.C.R.3).*"

[18] The Respondent referenced s. 284 of Part 9 of the MGA where at s. 284(4) complaint deadline is defined as “60 days after the notice of assessment date set under section 308.1 or 324(2)(a.1)”.

[19] The Respondent then provided a copy of Ministerial Order No. MSD:022/20 dated March 25th, 2020, highlighting Point number 4 that states: “*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.

[20] The Respondent provided some emails that dealt with the change of the original March 30, 2020 complaint deadline. They are summarized in the following:

- a) Monday, March 30, 2020 at 1:13 p.m. email sent from the Assessment Review Board to the Respondent stating: “*Please note that the deadline to file Assessment Review Board complainants has been extended by Ministerial Order MSD:022/20 to 4:30 p.m. on October 1, 2020.*”
- b) Monday, March 30, 2020 at 2:08 p.m. email sent from the Municipality to the Respondent stating that: “*Please note that the complaint deadline for RM Wood Buffalo has been extended to October 1, 2020. The Regional Municipality of Wood Buffalo is unable to process filing fees at this time.*” The email continued with the following: “*In an effort to prepare for, and prevent the spread of COVID-19, the Regional Municipality of Wood Buffalo has closed all offices to the public. While all our municipal offices are closed, we will still be accepting Assessment Review Board Complainants.*” In addition to advising of the Municipality’s extension of the complaint deadline to October 1, 2020, the following statement was included: “*The deadline date to file a complaint has been extended by Ministerial Order MSD:022/20 to 4:30 p.m. on October 1, 2020*”.

The Respondent concluded by stating that there were no further emails advising of any further changes to the complaint deadline.

[21] The Respondent provided a copy of Ministerial Order NO. MAG:014/20 dated April 17th, 2020, highlighting Point number 1 that states: “*The complaint deadline pursuant to Section 284(4) of the Municipal Government Act, for an assessment notice 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.*”

[22] In its Argument Appendix, the Respondent provided several court cases that could be summarized as follows: *If there is reasonable doubt as to the intention of a provision in an act or enactment, it is settled by recourse to the residual presumption in favour of the taxpayer.*

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

REBUTTAL

[24] The Applicant submitted an additional two emails dated June 29, 2020.

- a) At 3:20 p.m. the Respondent filed the complainant form and advised that the \$650 appeal fee could be charged to Altus Visa account.
- b) At 3:37 p.m. the ARB confirmed receipt of the complaint and advised the Respondent: *"In accordance with Ministerial Order MAG 014/20, the Regional Municipality of Wood Buffalo's Notice of Assessment Date was January 28, 2020 (original ARB Complaint Deadline of 4:30 p.m. on March 30, 2020); the amended ARB deadline was Sunday May 31, 2020, which was commuted to Monday, June 1, 2020."*

DECISION

[25] 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

[26] 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.

[27] 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 Municipality and the Minister of Municipal Affairs (Minister) to change dates or regulations that dealt with complaint deadlines.

[28] 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 both the Municipality and the Minister to amend the rules.

[29] 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 complainant 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.

[30] The Board found that on a very practical basis, the Municipality extended the deadline for filing complaints for two very reasonable reasons: 1) in order to curb the spread of the virus, its offices were closed, as was the province, and 2) it wasn't able to process payments which must accompany the complaints at the time of filing.

[31] 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 twice. The Board was provided with two copies of this duplicated Ministerial Order. The first copy of Ministerial Order NO. MSD:022/20 was dated March 25, 2020. The second copy of this Ministerial Order was dated March 31, 2020. The Board found that the first version appeared to be signed by the Minister, but the signature appeared to be upside down. The second version was signed by someone on behalf of the Minister. The Board was not provided with any explanation as to why the same Order was issued twice but noted that there were two different distinct signatures on the two versions of the same order.

[32] 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. Given the ambiguity of these changes, the Board placed considerable weight on the several court cases provided by the Respondent that could be summarized as follows: *If there is reasonable doubt as to the intention of a provision in an act or enactment, it is settled by recourse to the residual presumption in favour of the taxpayer.* 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 just six days before the subject complaint was filed.

[33] Further to paragraph [32], 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 both the Municipality and 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.

[34] 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 both the Municipality and the Minister. Initially, both the Municipality and 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?

[35] The Board found that there was no question that the complaint was filed June 29, 2020. This was confirmed by the two emails that were exchanged on that day. The first was sent by the Respondent to the Assessment Review Board (ARB) notifying that the complaint was filed and that the \$650 appeal fee could be charged to the Altus Visa account. The second email was from the ARB to the Respondent advising that a revised deadline for filing complaints was May 31 (amended to June 1, 2020). The Board was not provided with any evidence that the Respondent had been advised of any changes to the original extended complaint deadline of October 1, 2020 prior to the June 29, 2020 email.

[36] The Board found that it was clear from emails dated March 30, 2020 provided by the Applicant to the Respondent that the complaint deadline had been extended to October 1, 2020. The Board was not provided with any evidence that the Respondent had received any notification 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. The only notification provided to the Board was an email from the ARB to the Respondent that stated the complaint deadline was June 1, 2020. Accordingly, the Board finds the Respondent received insufficient notice of the newest deadline, and that strict enforcement of that deadline would result in a severe breach of natural justice that could not have been intended under the provisions of the MGA, which require clear and timely notice.

[37] 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.

[38] 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 28th day of August 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 (70 pages)
	Applicant's Rebuttal (3 pages)
R-1	Respondent's Disclosure (45 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
Andrew Izard	Representative for the Respondent
Edward Lubimow	(Observer)
Barry Campbell	Assessor, Regional Municipality of Wood Buffalo
Holly Stinson	(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

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.