

**CITY OF BROOKS, ALBERTA
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

592700 Alberta LTD., COMPLAINANT

and

The City of Brooks, RESPONDENT

before:

Paul G. Petry, PRESIDING OFFICER

Bevin Keith, MEMBER

Noel Moriyama, MEMBER

This is in reference to complaint to the City of Brooks Assessment Review Board in respect of Property assessment prepared by the Assessor for the City and entered in the 2012 Assessment Roll as follows:

Roll Number	Assessment	Location
043 0315000	\$ 188,940	101 1 Avenue East

Appeared on behalf of the Complainant:

- No one appeared in behalf of the Complainant, however, the Complainant had been given notice of the hearing and in accordance with section 463 of The Municipal Government Act (MGA) the hearing did proceed.

Appeared on behalf of the Respondent:

- Carol Megaw, Assessor

Assisting the Board – Amanda Kowalchuk, Assessment Review Board Clerk.

Property Description and Background

The subject property is improved with a restaurant and lounge known as Garth's Bar and Grill. The building is situated on a 3,839 square foot (sq. ft.) lot and the building itself is 3,443 sq. ft.

The Complaint Form in this matter was received July 15, 2013. The amount of the assessment and the type of improvement were identified as the matters being raised in this complaint. Section 5 of the complaint form does not provide a requested change to the property assessment amount but does provide reasons that appear to relate to the local improvement levies and taxes. Further the Complainant's disclosure dated July 11, 2013, states at the beginning "*this is an attempt to bring to your attn; what I consider unfair and unjust charges on my **tax assessment**.*" The body of the disclosure does not address the property assessment but does address local improvement **tax issues** related to paving, sidewalk and curbing. The CARB therefore has accepted the complaint as a complaint about a **tax** under section 460(1) of the MGA.

Issues

1. Does the CARB have jurisdiction to hear and decide on the tax and business disruptions that are the basis for this complaint?
2. If the CARB has jurisdiction, what are the errors and what corrections should be made within the jurisdiction available to the CARB?

Summary of the Parties Positions

Complainant

The Complainant provided some history going back as far as 1988 regarding local improvement bylaws affecting the subject property. The Complainant then addresses the 2013 tax assessments as follows:

Repaving frontage tax (no expiry)	\$133.90
Repaving flankage tax	\$224.06

This year the City undertook a beautification program, which included disruptive street work over a period of six months. Similar work the previous year also resulted in considerable disruption to the business causing a significant loss of trade.

The subject property backs on to the railway and is affected by the associated traffic and noise. The business is disrupted by a Lakeside packing/shipping operation occurring behind the restaurant causing considerable noise, dust and a rancid odor. Also an estimated 100 pipe trucks use the street which, is subject to the flankage tax, causing dust and excessive noise making it impossible to use the out door patio for the restaurant.

The Complainant's disclosure also raises many issues concerning the poor condition of the sidewalk, street, curbs and storm drainage system. A large number of photographs were included.

Respondent

The Respondent acknowledged that the complaint appears to be centered on the local improvement tax matters and related concerns respecting the operation of the business. The Assessor provided basic documented evidence as to the application of the property assessment using the net income capitalization approach including two comparable properties that had been valued in the same manner. No further property assessment evidence or argument was advanced as the Complainant had not lead evidence that specifically challenged the property assessment.

The Chief Administrative Officer, Alan Martens had introduced a document, which reviewed the background, bylaws and calculations supporting the repaving tax levies of \$133.90 and \$224.06 respectively.

Findings and Reasons**Legal Framework and Jurisdiction**

The CARB finds that the Complainant has not brought forward any evidence to challenge the property assessment and therefore has not reviewed the law pertaining to property assessment complaints. The CARB acknowledges that if it had been clear from the outset that the subject complaint would only be about a tax, the complaint would have been heard by a Local Assessment Review Board. The CARB in this case seized jurisdiction as both the property assessment and repaving taxes were stated as being the matters under complaint.

A complaint may be made respecting a tax and the CARB therefore has considered the legal provisions that apply in that case.

The MGA provides the following:

Section 460(1)

“A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.”

This provision makes it clear that one can file a complaint about a tax.

Section 460(6)

“There is no right to make a complaint about any tax rate.”

This provision significantly restricts the CARB’s jurisdiction respecting a tax complaint to process and application matters or the calculations used to derive the end value placed on the roll or notice.

Section 460(8)

“A complaint about a local improvement tax must be made within one year after it is first imposed.”

This provision allows the CARB to consider the local improvement taxes imposed for the 2013 tax year but not any tax imposed in earlier years.

The first issue identified by the CARB in this case concerns our jurisdiction. The Complainant in this case has correctly referenced the local improvement (repaving taxes) for the 2013 tax year. However, the specific areas of concern to the Complainant based on its disclosure and without the benefit of further explanation, appear to be about general fairness and justification for the tax levies. There is no evidence, which allows the CARB to conclude that the City of Brooks did not follow the correct procedure in approving or implementing these taxes. Nor is there evidence that there has been an error made in applying the tax rates to the subject property. The overview, provided by Mr. Martens, was not refuted by the Complainant. The CARB therefore, has accepted this overview as an accurate and correct reflection of how the subject repaving tax levies should have been put in place.

The Complainant disclosure is one page and deals primarily with concerns such as noise, odors, dust and poor condition of infrastructure near and around the subject property. The CARB finds that it is without jurisdiction to deal with any of these issues.

Decision

In view of the findings and reasons outlined above, the CARB concludes that it is without jurisdiction to deal with the primary issues raised by the Complainant and without evidence to deal with any tax issue that the CARB may have jurisdiction to decide. The CARB therefore confirms the assessment and the Special Tax levies for repaving as they appear on the 2013 Property Assessment and Tax Notice.

It is so ordered.

DATED AT THE CITY OF LETHBRIDGE THIS 9 DAY OF SEPTEMBER, 2013.



Presiding Officer

Paul G. Petry

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. R1	Respondent's Discloser
2. C2	Complainant's Disclosures

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Non residential	Commercial	Restaurant	Local Improvement tax	