IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board pursuant to the *Municipal Government Act*, Chapter M-26.1 (Act), Section 460(4).

BETWEEN:

Okotoks Air Ranch Inc. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

H. Kim, Presiding Officer
D. Rasmussen, Member
J. Tiessen, Member

These are complaints to the Town of Okotoks CARB in respect of property assessments prepared by the Assessor of the Town of Okotoks and entered in the 2011 Assessment Roll as follows:

Roll Number	**0052340**
Address	**2 Winters Way**
Assessment	**$1,990,000**

This complaint was heard on the 19th day of October, 2011 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group – C. Van Staden

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the CARB:

- L. Turnbull, ARB Clerk

Preliminary Matters

The evidence and argument with respect to this complaint overlapped substantially with that for roll number 0051910, the adjacent property located at 4 Winters Way. With the concurrence of the Complainant's representative and the Respondent, the two complaints were heard together. However, as the property owners were different, the CARB agreed to issue separate decisions for each matter.

The Respondent raised two preliminary matters, with respect to late disclosure and an issue not identified on the complaint form.

Preliminary Issue 1: Late Disclosure

Respondent's Position

The Respondent presented a screen shot of an email from the Complainant's representative, showing that the Complainant's disclosure had been emailed at 4:10 pm on Wednesday, September 7, 2011. This was 42 days prior to the hearing date, however the Respondent stated that the disclosure was late and should not be considered by the CARB. The Respondent referred to *Alberta Regulation 310/2009 Matters Relating to Assessment Complaints Regulation* (MRAC) and the *Interpretation Act, RSA 2000 Chapter I-8* (Interpretation Act) to support his position. Section 8 of MRAC specifies disclosure requirements and time limits in which it must be done:

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
- (a) the complainant must, at least 42 days before the hearing date,
  - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

The Interpretation Act provides for computation of time:

22(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.

MRAC states the complainant must disclose "at least" 42 days before the hearing date. Therefore the date of the hearing and the date of disclosure are to be excluded and the submission was required 43 days prior to the hearing, or on Tuesday September 6. Evidence not disclosed in accordance with Sec. 8 must not be heard by the CARB, and there is no discretion within the legislation. Sec. 9 of MRAC states:

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

Therefore, the Respondent submitted that there was no evidence before the CARB and the complaint could not be heard. The Respondent noted that the Okotoks CARB had previously dealt with this issue in two hearings on September 29, 2011 with the same agent, and determined there was no evidence properly before it and dismissed the complaints.

Upon questioning, the Respondent stated that should the CARB decide to grant a postponement to allow the evidence to be entered, he was ready to proceed and a postponement would not be required in order to allow time to review the late evidence.

Complainant's Position

The Complainant stated that disclosure dates for their files are tracked on a spreadsheet, and it was an inadvertent mistake that it was entered as 42 days prior to the hearing instead of 43 days. Other jurisdictions specify the due dates, not the number of days prior to the hearing. The Complainant presented hearing notices from the Town of Cochrane, the Town of High River, and the City of Airdrie, all of which specify the dates on which the disclosures are due, and in each case the due date is 42 days prior to the hearing. The Town does not specify the due date and references 42 days before the hearing.

The Complainant filed a legal brief which referenced the direction provided by the Supreme Court of Canada in *Québec (Communauté Urbaine)* v. *Corp. Notre-Dame de Bon-Secours*, [1994] S.C.J. No. 78 where it set out the following principles:

a. The interpretation of tax legislation should follow the ordinary rules of interpretation;
b. A legislative provision should be given strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and legislative intent: this is the teleological approach;
c. This teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question, and not on the existence of predetermined presumptions;
d. Substance should be given precedence over form to the extent that this is consistent with the wording and objective of the statute;
e. Only a reasonable doubt, not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour or the taxpayer.

These principles are reflected in Sec 10 of the Interpretation Act which states:

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

Therefore, the Act and MRAC must be interpreted in a way that allows the attainment of their objects. The goal of the legislation at issue is to provide taxpayers with a means to contest their assessments. The Complainant concedes that the disclosure was one day

late according to the computation of time in the Interpretation Act; however dismissal of the complaint for that reason would be contrary to the purpose of the legislation. The Complainant presented a number of CARB decisions from other municipalities in which a postponement was granted in order to allow the Respondent time to submit disclosure. The Complainant suggested that in this situation, the Respondent had filed materials and the CARB could proceed with the hearing. In the alternative, the CARB had the ability to postpone the hearing to allow time for disclosure in accordance with MRAC.

Findings and Reasons

The relevant provision in MRAC is enacted pursuant to Sec. 484.1(i) of the Act:

484.1 The Minister may make regulations

…

(h) respecting the procedures and functions of assessment review boards;

(i) governing the disclosure of evidence in a hearing before an assessment review board;

MRAC specifies CARB procedures with respect to how and when evidence must be disclosed before hearings. It requires disclosure "at least 42 days" before the merit hearing and also indicates that the CARB "must not hear" evidence that has not been disclosed in accordance with this rule.

As noted by the Respondent, the Interpretation Act states that with respect to calculating days in an enactment, "at least" and "not less than" is to mean clear days, and "at least" 42 days means 43 days or more. Since the Complainant's disclosure occurred only 42 days before the hearing, the Respondent argues that the CARB must not hear it, thus effectively eliminating the complaint.

The CARB finds the result requested by the Respondent would be extremely unfair. One reason is that in common English usage, "at least" 42 days means 42 days or more rather than the meaning given by the Interpretation Act. This is evidenced by the hearing notices issued by the City of Airdrie and the Towns of Cochrane and High River, in which the disclosure dates are specified and are in each case 42 days prior to the hearing dates. Thus, if the Respondent is correct, a complainant would suffer the extreme penalty of losing their right to appeal even though they complied with a common interpretation of the wording in the notice. A second reason is that in this case, the Respondent has suffered no prejudice owing to the "late" disclosure and is ready to proceed with the hearing; therefore the penalty to the Complainant would be far out of proportion to any prejudice suffered by the Respondent.

The CARB is of the opinion that MRAC cannot have intended such a harsh result. While one goal of the disclosure provisions is no doubt to encourage timely and full disclosure, their overall object is to ensure a fair hearing whereby the parties have an

opportunity to be apprised of the case they have to meet. It cannot be the intent of the disclosure provisions to effectively take away a right of appeal where there is no surprise or unfairness in the disclosure process. In this case, the spirit and intent of the provisions has been observed and its object of fair disclosure fully achieved. The CARB concludes that the Complainant's actions amount to substantial compliance with Sec 8(2)(a), and that consequently its evidence is not barred pursuant to Sec 9(2). Accordingly, the CARB exercised its power under 464(1) of the Act to allow the evidence into the record.

464(1) Assessment review boards … have power to determine the admissibility, relevance and weight of any evidence.

An alternative option would have been to grant a postponement to the following day or later to allow the Respondent the full 43 days:

15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

A taxpayer should not lose his right to appeal due to a failure to refer to the Interpretation Act when reading the provisions of MRAC. The Interpretation Act applies broadly to all enactments, and in other applications the computation of time provisions may deal with whether an appeal had been filed in time. In such a situation the provisions provide an additional day and have the effect of expanding the rights of the taxpayer, consistent with the fair, large and liberal interpretation that best ensures the attainment of the objects of the Act. In the situation at hand, applying the provisions for calculating time to Sec 8(2)(a) of MRAC has the opposite effect: making the disclosure deadline one day earlier, and not allowing the complaint to be heard if the deadline is missed. This result is not consistent with the objects of the Act. The CARB considered this situation would qualify as exceptional circumstances that justify granting a postponement.

However, in this case, the CARB determined that a postponement was not necessary for the reasons noted above and that the hearing should proceed.

Preliminary Issue 2: Issue not identified on Complaint Form

Respondent's Position

The Respondent objected to the use of the income approach in determining the requested assessment. The original complaint form stated a number of grounds for appeal, but focused on land rates and there was no reference to rental rates or other income approach parameters. MRAC states:

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The issue of income approach argued in the Complainant's disclosure was not identified on the complaint form and cannot be considered by the CARB.

Complainant's Position

The Complainant stated that the complaint form is completed based on information from the client taxpayer, prior to examining the assessment in detail. The issues listed are general, and intended to cover potential arguments to be made in the detailed disclosure. While land value had been listed as an issue, it was later determined that it would not be contested for the subject property.

The Complainant disputed that the income approach had not been identified as an issue. The complaint form lists, among others, the following:

> Issues and Grounds
> The assessment of the subject property is in excess of its market value for assessment purposes
> The municipality has applied the incorrect valuation methodology when calculating the assessed value of the subject property

The rental rates and income approach parameters argued in the evidence are contained in the stated issues, and therefore this issue is properly before the CARB.

Findings and Reasons

The CARB finds that the issues on the complaint form noted by the Complainant encompass the use of the income approach and argument of appropriate rental rates. The complaint form is intended to identify the reasons for filing a complaint in the first instance, and it is not reasonable to require more than a general level of detail. The legislation provides a minimum of 28 days prior to the hearing for the Complainant to prepare disclosure at which time the detailed arguments and evidence would be expected to be prepared. Therefore the CARB will hear argument in support of the income approach and rental rates.

Property Description and Background

The subject property is a 12,655 SF office and airplane hangar built in 1981 on a 31.42 acre parcel zoned Aerodrome District (AD) and assessed on the income approach based on 8,355 SF warehouse/airplane hangar and 750 SF mezzanine at $8/SF, 1,590 SF office-main at $12/SF and 1,960 SF office-upper at $10/SF. A vacancy allowance of 5.5% and vacancy shortfall of $5/SF for the airplane hangar and $6.50/SF for the office and mezzanine are applied and the resulting income capitalized at 9.5% to arrive at an assessment for the building. The property is also assessed for 30.72 acres of land at $30,000 per acre of land in excess of the 0.70 acres required to accommodate typical

industrial site coverage. This includes an airport landing strip and taxiway to the hangar facility. The land rate is not under dispute. The building value is added to the excess land for a total assessment of $1,990,000.

Issue

A number of issues were listed in the complaint form; however the only issue argued at the hearing was whether the correct rental rates were applied in calculating the value of the subject.

CARB'S Findings in Respect of the Issue

Complainant's Position

The Complainant submitted that the rental rates applied by the Respondent are overstated. The Complainant presented rents for industrial properties in Calgary that rent for less than the rate applied to the subject, ranging from $5.25 to $7.80/SF with a median of $6.25. The subject property is fully leased, but the rents achieved are far less than the rates applied in the assessment. The leases were renewed in May 2010 for a five year term at an overall rate of $4.40/SF. The Complainant presented the 2010 rent roll for the subject property showing $3,000/month rental increasing to $4671.58/month in April 2010. The specific rates for the office and airplane hangar were stated but the Complainant requested they be left out of the record for confidentiality reasons. The Complainant stressed that while this was a renewal, it would have reflected market, as there was an adjacent building, vacant and available for lease which would have created competition for the tenancy resulting in a lease rate reflective of market rates.

The subject site is not industrial. The route into the property is a circuitous route that goes through residential areas, and the residents would be unhappy to have light industrial uses on these sites. The assessment request for information forms are sent out in late 2010 for the 2011 assessment. The Respondent would have been aware of the rental rates being achieved at the time the assessment was prepared.

The actual rents are the best indicator of market rates for this property, as it is unique. Applying the actual rents to the parameters used for the income approach to value would result in an assessment of $1,367,000 while using average weighted rents would result in a value of $1,407,000 which is the requested value.

Respondent's Position

The Respondent presented an orthophotograph showing the location of the subject. The Okotoks Air Ranch was conceived as an aviation-centred residential development around the 3400 ft. landing strip. The subject property is fully leased to a flying school.

The Respondent presented comparable assessments for industrial property to support the rates used in the assessment. In particular, one comparable, a storage facility assessed at $10/SF main and $5/SF mezzanine has no sewer and water, compared to the subject which is fully serviced. There was no complaint in 2011 on that property, suggesting to the Respondent that the assessment reflected market value. The Respondent stated that typical rents, not actual, should be used to arrive at the assessment. The rates applied are typical for similar property in the Town and the assessment should be confirmed.

Findings and Reasons

The subject is not comparable to typical industrial properties. AD does not allow industrial uses, and vehicular access to the property is through residential roads which would not support industrial traffic. In response to questioning, the Respondent presented the uses permitted in General Industrial District (I-2), the zoning for the industrial property presented as a comparable. I-2 allows a much greater range of permitted uses, including manufacturing, warehousing and storage yards as well as a greater range of discretionary uses, including all of the discretionary uses permitted in AD other than Aerodrome Service Shops.

Property with I-2 zoning cannot be considered similar to the subject property, and rents achieved by industrial uses in I-2 districts cannot be considered typical rent to be applied to the subject property, which has a unique use without other comparable or similar facilities within the Town, other than the fully vacant property to the east. While typical rates are preferable to actual rates, in this case the only evidence available is the actual rate. The lease was contracted in May 2010, close to the valuation date, and the CARB is satisfied that it is a reasonable indicator of typical market rents in the municipality for aircraft hangar space and associated office uses.

Accordingly, the best evidence of the potential income of the subject is its actual income, based on the lease rate agreed to in May 2010. Applying the 9.5% cap rate to the actual income, with no vacancy allowance as the subject was fully leased, results in a value of $590,000 which, when added to the excess land value results in a total assessment of $1,511,000.

Board's Decision

The complaint is allowed, in part, and the assessment is reduced to $1,511,000.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 27th day of October 2011.

H. Kim
Presiding Officer

Appendix A – Documents presented at the Hearing and considered by the CARB

C1 Complaint form, Roll #0051910 - 4 Winters Way, Okotoks
C2 Complaint form, Roll #0052340 - 2 Winters Way, Okotoks
C3 Complainant's Evidence Submission, Roll #0051910 - 4 Winters Way, Okotoks
C4 Complainant's Evidence Submission, Roll #0052340 - 2 Winters Way, Okotoks
R5 Assessment Brief, Roll #0051910 - 4 Winters Way, Okotoks
R6 Assessment Brief, Roll #0052340 - 2 Winters Way, Okotoks
C7 Complainant's Legal Submission regarding preliminary matter of late submission
C8 Decision - Calgary CARB 1279/2011-P (postponement to allow evidence)
C9 Decision - Calgary CARB 2285/2011-P (postponement to allow evidence)
R10 Decision - Calgary CARB 1471/2011-P (Respondent evidence late, not considered)
R11 Decision - Calgary CARB 0927/2010-P (dismissal due to late evidence)
R12 Decision - Okotoks CARB Order #0238/06/2011-J (dismissal due to late evidence)
R13 Decision - Okotoks CARB Order #0238/05/2011-J (dismissal due to late evidence)
R14 General Industrial District (I-2) List of Permitted and Discretionary Uses, P. 147 Okotoks Land Use Bylaw

Appendix B – Documents presented after the Hearing and considered by the CARB

R15 Corrected Assessment Calculation Summary

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

470(2) Any of the following may appeal the decision of an assessment review board:

- *(a) the complainant;*
- *(b) an assessed person, other than the complainant, who is affected by the decision;*
- *(c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- *(d) the assessor for a municipality referred to in clause (c).*

470(3) An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- *(a) the assessment review board, and*
- *(b) any other persons as the judge directs.*