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:

Tristar Communities 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	**0005720**
Legal Description	**Block 1, Plan 1831LK**
Assessment	**$6,156,000**

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 Matter: 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 5:09 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.

Property Description and Background

The subject property is a 31.04 acre vacant parcel zoned South Business Industrial District (I-1S), located to the north of the Home Depot and Costco stores at 32 St E north of Highway 7. It is a single parcel fragmented by registered road plans for 32 St, Southbank Road and Southbank Cr. The assessment is based on a vacant land rate of $300,000/acre for 10 acres of land west of Southbank Cr. and $150,000/acre for 21.04 acres east of Southbank Cr.

Issue

A number of issues were listed in the complaint form; however the only issue argued at the hearing was whether the land rate applied to the property was correct.

CARB'S Findings in Respect of the Issue

Complainant's Position

The Complainant submitted that there is no demand for industrial lots in the Town at the valuation date, and this had not changed at the condition date of December 31, 2010. Catchment servicing is in place, but boundary servicing and subdivision has not been

started. The land value should be analyzed based on its highest and best use, which requires the determination of what is physically possible, legally permissible, financially feasible and from that, maximally productive.

It is physically possible to construct a number of retail/industrial improvements on the site; however it is not legally permissible, as the subdivision plans are not approved. The servicing is at an early phase with minimal development and no actual connection. The site has been graded but left standing so further grading will be required for development. The economic climate in the Town is such that it is unlikely that these lands will be required for industrial use in the near future. There are a number of vacant sites closer to the highway and the developed edge of the Town to accommodate any potential users or purchasers of retail and industrial lands. The Town has also developed industrial sites for sale. It is not financially feasible to put funding into further developing these lands, and it will likely be 5-10 years before these lands will be required as industrial sites. The highest and best use of this property is therefore its current use as raw land.

Vacant land sales in the Town were reviewed:

- The sale at 104 Southbank Road from TriStar to Costco, 13.292 acres for $462,570/acre at September 15, 2009. The site was purchased to construct a Costco big box warehouse store, liquor store and gas bar. It was fully serviced and superior to the subject which is still zoned I-1S, not fully serviced nor subdivided.
- The sale at Range Road 549 to Apex Land Fund GP Ltd, 129.48 acres for $67,030/acre at June 30, 2010. The land was purchased for a residential subdivision and farmed at the time of sale.

The Complainant suggested a built up rate using the sale of the Apex Land and including the value of the servicing that is in place would provide a reasonable estimate of the subject land. 31.04 acres at $67,000 per acre and $1,738,166 of development costs (detailed in evidence) would result in a total value and requested assessment of $3,817,800.

Respondent's Position

The Respondent presented orthophotographs of the subject and vicinity showing the condition of the area in 2002, 2005, 2007 and 2009 with transition from farmland to commercial uses. Recent aerial photographs of the Southbank Business Park show significant development. The Complainant's statement that the lands will not be further developed for 5-10 years is not supportable. Land in the vicinity of the subject parcels are being actively marketed, and a subdivision application was made in September 2011 for a 0.889 ha (2.2 ac) parcel on the subject lands. The Town is developing and marketing industrial parcels created as a result of the realignment of 32 St E and a number of these have sold.

The sales presented by the Complainant are not comparable. The Apex lands are dissimilar from several perspectives such as land use, net developable area, and condition at time of sale. There are 50 acres of undevelopable land included in the 129 acres, and the site was farmland with only partial servicing to the boundary. The subject has servicing to the boundary, and storm and sanitary sewer services penetrate the site to accommodate the sewage lift station that was completed in 2010.

The Complainant has failed to demonstrate that the assessment is incorrect and it should be confirmed.

Findings and Reasons

The Complainant presented two sales to support the position that the assessment was in excess of market value. The Costco site was clearly superior, but the sale price per acre is more than double that of the assessment. The Apex sale was a much larger parcel, farmland intended for residential development, with a significant portion of the land not capable of being developed. The CARB could draw no conclusions from that sale as to the value of the subject parcel, but notes that the sale price per developable acre of the Apex lands is closer to the $150,000/acre applied to the subject lands east of Southbank Cr.

The $300,000/acre applied to the subject lands west of Southbank Cr, on balance, given the sale price of the Costco site and the subdivision application on that portion of the land closest to the intersection of 32 Street E and Southbank Road, is reasonable. Accordingly, the CARB found no compelling evidence to support a reduction.

Board's Decision

The assessment is confirmed at $6,156,000.

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
C2 Complainant's Evidence Submission
R3 Assessment Brief
C4 Complainant's Legal Submission regarding preliminary matter of late submission
C5 Decision - Calgary CARB 1279/2011-P (postponement to allow evidence)
C6 Decision - Calgary CARB 2285/2011-P (postponement to allow evidence)
R7 Decision - Calgary CARB 1471/2011-P (Respondent evidence late, not considered)
R8 Decision - Calgary CARB 0927/2010-P (dismissal due to late evidence)
R9 Decision - Okotoks CARB Order #0238/06/2011-J (dismissal due to late evidence)
R10 Decision - Okotoks CARB Order #0238/05/2011-J (dismissal due to late evidence)

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.*