IN THE MATTER OF A COMPLAINT filed with the County of Paintearth No. 18 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:

Alberta Power (2000) Ltd. c/o AEC International Inc. (AEC) represented by Bennett Jones LLP - - Complainant

- and –

County of Paintearth No. 18 (Paintearth) represented by Reynolds Mirth Richards & Farmer LLP - Respondent

BEFORE:
Paul Petry, Presiding Officer
Tony Nichols, Member
Wayne Richardson, Member

CARB Counsel:
G. Stewart-Palmer, Barrister & Solicitor

Staff:
T. Peach, Composite Assessment Review Board Clerk

A preliminary hearing was held on July 28, 2011 in Castor, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

70005980	Assessment	$59,318,860

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

This appeal relates to a property assessment for land buildings and structures. The issues raised by the Complainant are that the assessed value of property on this roll number includes the value of linear property and that the assessment is inequitable considering the assessment of other similar properties. The Complainant argues that the value of the improvements pertaining to linear property should be transferred to the linear property roll and valued accordingly.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. During the hearing, the parties addressed the CARB on three issues, which are addressed below.

Preliminary Matter #1 Application to Strike the Complaint based on Section 460(11)

Preliminary Matter #2	Application to Strike the Complaint based upon alleged non-compliance with section 460(7) and section 2 of the matters relating to Assessment Complaints Regulation (MRAC)
Preliminary Matter #3	If the CARB does not strike the Application, a direction for the Complainant to produce a Complaint Form complying with section 460(7) and section 2 of MRAC
Preliminary Matter #4	Merit Hearing and Disclosure dates and whether the CARB loses jurisdiction if the complaint is not heard before December 31

Matters Arising from July 5, 2011 Hearing

Before the hearing started, the CARB wanted to visit outstanding issues from the July 5, 2011 hearing:

1. The possibility of having a joint hearing with the Municipal Government Board on the issue of whether components of the power plant were linear property.

   The CARB confirmed that it had received correspondence from Counsel for both parties indicating that a joint hearing would not be proceeding. Both Counsels agreed that a joint hearing was not likely to happen.

2. Scheduling in the event that the application of the Respondent was not successful.

   The CARB suggested a hearing commencing not later than November 28, 2011 with exchange dates being October 14, 2011 for the Complainant, November 11, for the Respondent and rebuttal of November 18, 2011.

   Counsel for the Respondent suggested a two to three day hearing. Counsel for the Complainant suggested a five day hearing. Counsel for the Respondent advised that due to scheduling of other hearings, a witness for the Respondent was not available except for a very brief window and therefore the merit hearing of this matter should be scheduled for January or February, 2012. The Complainant indicated that the date suggested by the CARB could be met by the Complainant; however it also understands the issues faced by the Respondent and would not object to the merit hearing being scheduled in early 2012.

   The CARB directed that the parties advise no later than Tuesday, August 2, 2011 in writing as to:

   a. the parties' position in relation to dates for the merit hearing and any submission the parties have in relation to timing of disclosure; and
   b. the parties' submissions in relation to their position on whether the CARB would lose jurisdiction if the hearing is not completed by year end.

Institutional Bias

In response to the CARB's question as to whether either of the parties had any concerns with the constitution of the Panel, Counsel for the Complainant stated that if the matter were to proceed to judicial review before the Court, he would be raising the issue of institutional bias on the basis that a significant portion of the tax base was at issue in the hearing before the CARB. He stated that he was not raising a challenge to any individual member of the panel on the basis of bias at this stage. Counsel for the Complainant stated that the decision had been made by the Legislature that one provincial member be appointed and that two members be appointed by the local authority to consider issues that involve a large percentage of the tax base. In his view, it would be difficult for the members appointed by the municipality to disabuse themselves of the impact on the tax base when considering the argument. He stated he was not expecting the CARB to address the matter during this hearing, but indicated that he would refer back to the comments he had made at this hearing.

Counsel for the Respondent objected to a "placeholder allegation" of institutional bias. Counsel for the Respondent submitted that a claim for bias needed to be made and could not be "placed on the record". If the allegation was being made, it needed to be addressed, otherwise it was not being made. The position of the Respondent was that if the Complainant was not making an allegation of bias, then there was no need for the CARB to make a decision on bias.

Decision on Institutional Bias

The CARB noted that there was no direct challenge with regard to the CARB for Paintearth made specifically in relation to this hearing. The CARB further noted that the Complainant had not challenged members of the CARB on the basis of individual bias or institutional bias. Since the Complainant had not made a specific objection on the basis of bias and had not asked for a ruling by the CARB, the CARB has not made a ruling. The CARB feels confident in moving forward with the application and does not believe that there is a bias based upon the circumstances before it.

Counsel for both parties confirmed that no witnesses would be called for the purposes of the hearing.

Preliminary Matter #1 Application to Strike the Complaint based on Section 460(11)

Counsel for the Respondent argued that pursuant to section 460(11) of the MGA, the CARB has no jurisdiction to deal with a complaint about linear property. The Complaint Form requests a conclusion from the CARB that $47 million worth of "things" on the site are linear property, which is not a conclusion that the CARB can make.

Counsel for the Respondent argued that under section 460(4) and (5) of the MGA, the term "property" is a defined term as found in section 484 of the MGA. "Property" under section 284 includes land and improvements which includes; structures, machinery, equipment and mobile homes. However, the definition of "property" does not include linear property. Sections 460(5)(f) and (g) and 460(11) all work together. Linear properties are assessed by the Province

under section 292. The CARB has no jurisdiction to deal with a complaint "about" linear property. The CARB does not have jurisdiction to transfer property to a linear roll, nor do they have jurisdiction to conclude that a "thing" is linear property.

Property is land and improvements. Improvements are structures, including buildings, things attached to structure, machinery equipment and mobile homes. Nowhere in the definition is the term "linear property" included. Linear property is a separately defined item which includes electrical power, wells and pipelines, telecommunications and street lights.

The definition of property in section 284 is a defined term excluding linear property.

Had the Complainant written in its Complaint Form that it wanted the CARB to determine which of the items were structures, that would be within the CARB's jurisdiction. The Complainant has not framed its complaint in that way. It has requested that the CARB determine what things are linear property which is outside the jurisdiction of the CARB.

In relation to the case of *CNRL v. Regional Municipality of Wood Buffalo*, Counsel for the Respondent urged the CARB to read the decision in its entirety. She submitted that it was not a case of the CARB taking jurisdiction to make a decision that an item was linear property or not.

Although the dismissal of a complaint would be harsh, the right to file a complaint comes with responsibilities and until all three requirements for the filing of a complaint are met, it is not a valid complaint.

Under section 460(11) Counsel for the Complainant argued that the purpose of section 460(11) was to prevent the Board from dealing with assessments about linear property. However, it does not prevent CARBs from dealing with issues that touch on linear, including whether items have been improperly included in a non-linear assessment. Counsel for the Complainant argued that it was an error for the Assessor to include linear property in a non-linear assessment and that the only avenue of appeal for the Complainant is to the CARB. The Complainant is entitled to raise the argument that the assessment by the County is excessive because it includes linear property. The objective of the complaint is to identify that property which is wrongly included.

Counsel for the Complainant urged the Board to consider that if the Respondent's argument was correct, a property of $60 million that contains nothing but linear property, could not be appealed to the CARB on the basis that the CARB has no jurisdiction to deal with linear complaints. On its face, he urged the Board to reconsider this matter as it would lead to absurdity.

Counsel for the Complainant cited the *CNRL v. Regional Municipality of Wood Buffalo* case where the CARB did take jurisdiction over linear assessment (see page 12 and 17 of Tab A of the Complainant's materials). Counsel for the Complainant submitted that it was clear that the Board had assumed jurisdiction in relation to the linear matter. Counsel for the Complainant submitted that section 460(4) indicates that any assessed property provides a right to appeal in relation to that assessed property.

Section 460(5)(f) also provides for the right of complaint about the type of property.

In relation to the argument dealing with the definition of "property" and the definition of "improvement", section 460 provides that one can appeal the type of property. Clearly the type of property should allow the Complainant to appeal whether the property is linear (one type of property) vs. non-linear (another type of property).

Decision

The CARB has jurisdiction to hear the subject complaint and to determine whether certain elements within the current assessment are correctly assessed as "property". The CARB does not have jurisdiction to move any element on to the linear roll or to set a value for items it may find to meet the definition of "linear property".

Reasons

Section 460 (11) is a bar to jurisdiction concerning linear property; however, the property in question is not at this point in time "linear property", as it has been assessed by the municipality in accordance with section 289(1) and (2) of the MGA and is classified under the provisions in section 297(1) of the MGA.

The CARB would agree it has no jurisdiction to hear a complaint about a property that has been categorized and assessed as "linear property", but this is not the case here. When addressing this question at the merit hearing (yet to be scheduled before the CARB), it will be necessary for the CARB to review all relevant sections of the MGA and Regulations. This, no doubt, would include the review of the definitions of "property" and "linear property" in order for the CARB to determine the issues brought in this complaint.

The CARB has reviewed the *CNRL v. Regional Municipality of Wood Buffalo* case, but the limited reference in that case does not provide much assistance to the CARB in relation to the question before this CARB on the question of the scope of the CARB's jurisdiction.

The CARB has carefully considered the argument and interpretation of the legislation advanced by the Respondent, but notes that if it were to accept that argument, there would be a potential gap in the legislation. Should the CARB adopt the interpretation as advanced by the Respondent, the owner would have no recourse with respect to having its complaint heard and decided.

The Respondent argued that had the Complainant indicated that "structures" were the subject of their complaint, then there would be no objection to proceeding to have the complaint heard. This would have led to a circular set of arguments without resolve as "structures" - although a defined term - can mean a "building" which is specifically excluded from linear property, or it can also mean another type of structure which is specifically included in the linear property definition. According to the complaint document, not only the inclusion of improvements which form part of structures are the reason for the complaint, but also supporting structures, foundations, footings and other things. These all appear to be equal aspects forming the grounds for the complaint.

The CARB has no jurisdiction to declare a value for linear property. However, if the CARB, hearing the merit matters of this complaint, should find that certain elements of the subject property are not "property" to be assessed at market value but rather are found by the CARB to fit the definition of "linear property", then in that case it is likely that such elements would be removed from the "property" assessment roll with a recommendation that these items be reconsidered by the Linear Assessor.

Preliminary Matter #2 **Application to Strike the Complaint based upon alleged non-compliance with section 460(7) and section 2 of the matters relating to Assessment Complaints Regulation (MRAC)**

Preliminary Matter #3 **If the CARB does not strike the Application, a direction for the Complainant to produce a Complaint Form complying with section 460(7) and section 2 of MRAC.**

Counsel for the Respondent argued that the Complaint should be dismissed for a failure to comply with section 460(7) of the *Municipal Government Act* (MGA) and section 2 of Matters Relating to Assessment Complaints Regulation (MRAC). The Complaint must be understood in the context of the property under complaint. Counsel referred to Tab AA showing the nature of the property. There are 28 buildings comprising approximately $59 million of assessed value. The document at Tab AA contained excerpts from a document prepared by Shaske & Zeiner Appraisal Consultants Ltd. However, it was submitted for the purposes of showing the nature of the building and not for the value. Counsel for the Respondent then referred to the Industrial Details which have been provided by the Respondent municipality to the Complainant and which were included as part of the Complaint Form (Tab A, Respondent materials).

Counsel for the Respondent reviewed the Complaint Form as filed by the Complainant including the Statement of Issues and the supporting grounds as listed. Counsel raised an objection to the general statement included under the issues of complaint "such further and other facts or grounds as are identified through disclosure of the manner in which the assessment and similar assessments were prepared and as the equity analysis developments through amended notices or CARB decisions".

Counsel for the Respondent submitted that there are three necessary components to a valid appeal:

1. The filing must occur on time. The Respondent does not contest this item.
2. The Complainant must pay the fee. The Respondent does not contest this item.
3. The Complaint must comply with section 460(7) and section 2 of MRAC. The Respondent does contest this item. The requested assessed value is $11,835,652.00. However, there is no indication as to how that exact number has been derived or what combination of items contained in the industrial details make up that specific figure.

Counsel for the Respondent submitted that if the Complainant had taken a pencil and circled the building listed on the Industrial Details and identified a certain percentage as linear property, there would be some indication of what the complaint is about and would meet the "substantial compliance test".

Counsel for the Respondent stated that the completion of the form in a proper manner would not have been time consuming or onerous. Although there is no definition of "issue" or "grounds", different words have been used, which suggests that they mean different things. In the present case, the issue and supporting grounds as set out on the Complaint Form are the same. When interpreting the words of section 460(7) and 460(11) of the MGA and section 2 of MRAC, the CARB must look at the words used in the section and give them meaning. In order to do this, the CARB is entitled to look at Hansard and must look at the framework of the Legislation as a whole. The goals of the Legislation as evidenced by Hansard and other documents (see Tab G and H of the Respondent's materials) are to provide accountability of all parties, disclosure (see section 299, 300 and section 8 of MRAC) and administrative efficiency.

In relation to administrative efficiency, the Complainant has had months to put their Complaint together while the municipality must wait for what is in the Complaint Form in order to get prepared. There is very little that the Respondent Municipality can do to get prepared until it has received disclosure because there are 28 buildings with a $48 million reduction in assessed value, but no details provided by the Complainant.

Section 460(7) previously said that the CARB "may" dismiss a complaint. That language has now been changed to mandatory language indicating that the CARB "must" dismiss the complaint. In addition, the legislation previously provided a Complainant with 30 days to file a complaint. That time has now been expanded to 60 days. The longer period of time for the paperwork is an indication that more is expected on the form than had previously been expected by the Complainant.

In addition, part of administrative efficiency is to promote dialogue between the parties. If there is a meaningful Complaint Form, the assessor will know what he is dealing with.

In respect of previous CARB decisions, the decisions have lacked any analysis on the meaning of section 460(7)(c) addressing what the "correct information" must be. The test as provided in the *Boardwalk* case is "substantial compliance". The Respondent is not challenging that test. However, the CARB decisions have not addressed what "correct information" needs to be found on the Complaint Form. The Respondent indicated that the "correct information" could have been as simple as some hand written notes, some highlighting or something on the form. There is nothing contained within the materials and, therefore, the form has not been substantially completed in accordance with the test. The requirement to insert an assessed value is not a substitute for what the "correct information" is.

In referring to decisions of other CARBs, which are not binding upon this CARB, the Complainants in those cases have done more than what has been done by the Complainant in this case. If what has been completed by the Complainant in this case meets the substantial

compliance test, it is a very low threshold and frustrates the Legislature's stated goals of accountability, timeliness and administrative efficiency.

Counsel for the Respondent did not argue that full and complete information needs to be exchanged at this time. However, the Complainant must make some attempt to show what the correct information must be. The Respondent submits that the Complainant has not made that effort and the complaint should be dismissed.

In response to the argument from the Complainant, the Respondent disagreed that the power plant on its face was linear property. Further, the question was not what the Assessor had done in relation to his assessment. The question was what the Complainant was disputing. Counsel for the Respondent advised that the question is not whether the assessor knew how to prepare the assessment or how he prepared the assessment. The question is whether the assessor knows what the property owner thinks is wrong with the assessment and what the correct information should be in relation to the property and the assessment notice.

Counsel for the Respondent stated that substantial compliance should be governed in the context of what is under complaint, the property, the issue and the form with the Industrial Details sheet. Substantial compliance could be as simple as circling or highlighting a few notes on the Industrial Details sheet. It does not need to be extensive. Counsel for the Respondent clarified that the Industrial Details sheet was burned to a CD and put in an envelope sent to the address on record for the property and was sent at the same time as the assessment notice. (This was confirmed by counsel for the Complainant, but he retained the position that this does not constitute part of the assessment notice.) Counsel for the Respondent urged the CARB to review sections 303 and 309 of the Act in relation to the assessment notice. Counsel for the Respondent indicated that there was no ambiguity in section 460(7) and therefore nothing to be resolved in favour of the taxpayer.

Counsel for the Respondent asked the CARB to disregard the comments made at paragraphs 67 – 70 of the Complainant's materials as being statements of fact put forward by counsel for the Respondent under the guise of argument. In the same way, paragraph 72 of the Complainant's materials should be disregarded on the basis that it deals with actions of other municipalities not in question in this appeal.

Counsel for the Respondent urged the CARB, if it does not order the dismissal of the complaint, that the property owner provide missing details. The CARB has the authority to do so, pursuant to its power to control its procedures and under section 465 which provides that the parties can be directed to attend and produce documents.

Counsel for the Complainant submitted that the line of authorities contained in both briefs have examined what the word "issues", "grounds" mean and have examined legislative intent. These arguments have been raised numerous times by municipalities with the rulings against the municipalities. Counsel for the Complainant clarified that the Complainant was not asking the CARB to transfer items to the linear assessment. Rather, the Complainant has concurrently filed an appeal to the Municipal Government Board relating to the linear assessment.

The Complaint Form has been fully completed in relation to item 2, item 3 (amount), item 4 (class), item 6 (type of property), and item 7 (type of improvement). The form belies the level of detail suggested by Counsel for the Respondent. The form requires the Complainant to tick boxes and it has done so. Further, the limited amount of space contained in the form itself suggests that the space is sufficient. Disclosure is provided later by virtue of section 8 of MRAC.

In response to the question of what is the meaning of "correct information", the answer is specific to each case and the CARB must understand the context of the property under complaint. He agrees with the Respondent in this regard. The CARB cannot make a general ruling and that question can only be answered in reference to an individual complaint.

Mr. Hall, representative for the Complainant, indicated that Industrial Details were provided to the Complainant at the same time as the Assessment Notice. However, both Mr. Hall and Mr. Friend advised the CARB that the position of the Complainant was that the Assessment Notice was different from the Industrial Details. Counsel for the Complainant stated that the legislation specifically refers to the Assessment Notice. Therefore, what is contained within the Industrial Details is not relevant to the issue of compliance to section 460(7). The correct information is the assessed value of the non-linear property.

Counsel for the Complainant argued that the power plant on its face was linear property and that considerable work had been done by the assessor to determine the value of the assessment. It was improper to suggest that the municipality needed time to get up to speed because it had completed the entirety of the assessment.

The information provided in the Industrial Details was also general. Therefore, it was impossible for the taxpayer to respond on a specific basis.

Mr. Hall stated that the figure of $11 million as the correct assessed value was prepared based upon modelling and an examination of the various improvements of the site. The number was based on the presumption that once the Complainant had its engineering report, as much as 85% of the property would be classed as linear. Mr. Hall stated that the Complainant is not contending that office buildings or warehouse buildings are linear property.

Counsel for the Complainant stated that the level of detail requested by the municipality would be dozens or hundreds of pages and that it was completely unreasonable to say that this must be completed within 60 days or the Complainant loses its right to appeal.

The nature of the disclosure being sought by the municipality is that compelled by the disclosure obligations of section 8 of MRAC. He stated that there has been substantial compliance with the legislation. He questioned why the municipality did not provide that information from the assessor, but expects it from the taxpayer.

He referred to the *Boardwalk* case at paragraph 31 of his materials and the *Altus* case. He reviewed the authorities found at paragraphs 32 – 44 of his materials. He argued that a

reasonable interpretation of the legislative scheme suggests that substantial compliance is all that is necessary and that the taxpayer has substantially complied.

The relief of striking out the complaint for non-compliance is draconian and that the taxpayer should not lose its right of appeal.

Counsel for the Complainant referred to a 2003 decision of the Assessment Review Board of the County and referred to meetings recently held between the parties.

Decision

The Complainant is directed to identify which of the 28 components set out on the Industrial Details are subject to the assertion or "grounds" that there are items within that component that contain "improvements (that) form part of the structures, installations, supporting foundations, footings and other things pertaining to linear property" and provide, where possible, an approximate percentage breakdown of linear and property. This is to be done by October 17, 2011 at 4:30 pm.

Reasons

Although the Complainant argued that the power plant on its face was linear property, the CARB agrees with the Respondent that there is no evidence before the CARB to support this claim. In its deliberations, the CARB has also disregarded the comments made by the Complainant at paragraph 67 to 70 of its brief as there was no evidence brought forward before the CARB on these points. In the same way, statements attributing motives to other municipalities (as set out in paragraph 72 of the Complainants brief) have also been disregarded by the CARB and formed no part of its reasoning.

The CARB is well aware that previous CARB decisions of this municipality or others are not binding precedents; however, that is not a basis to disregard previous relevant CARB decisions. All quasi-judicial tribunals attempt to be relatively consistent in their interpretation of the law and in their application of procedural fairness when the facts are similar. The Municipality indicated that many of the CARB decisions, across the Province on this matter, have applied a relatively low threshold as to the question of the level of detail required to meet the test of "substantial compliance".

The Municipality urges the CARB to interpret the requirements under sections 460 (7) (b) and (c) within the context of the entirety of the relevant legislative scheme and within the purpose of the recent changes to the legislation. The CARB would not disagree with this point. The Municipality referenced the importance of considering Hansard and other information respecting the introduction of legislative changes in 2010. The CARB acknowledges that these changes do point to issues of accountability and efficiency; however, they are also balanced with procedural fairness. The CARB is also bound to look to principles of procedural fairness within the context of natural justice and case law, on point with the facts of this case.

Although the municipality objected to the inclusion of the general statement found at the bottom of the Complaint, the CARB has focussed its reasons on the first portion of the Complaint Form since the issue of "substantial compliance" is to be found there, and not in the latter portion of the Complaint Form. It seems clear to the CARB that both parties will be making further detailed submissions and arguments in their respective disclosures with testimony from expert witnesses.

Although the Respondent argued that there was no indication as to how that exact number has been derived or what combination of items contained in the industrial details make up that specific figure (the requested assessed value of $11,835,652.00), the CARB notes that there is no requirement on the Complainant at the time of filing the complaint to develop the detailed make up of their requested assessment. The CARB believes that at the time of filing the Complaint, it is likely that the Complainant has only an estimated value.

The CARB considered the argument advanced by the Respondent that the expanded time for filing a complaint suggests that more detail is required. The CARB can understand why the Respondent may arrive at this conclusion; however, there is no direct evidence that this is the reason for the longer period now available to decide to file a complaint. The CARB notes that other possible reasons could include time to allow agents to complete and file the "Agent Authorization" document or to have time to gather and complete a preliminary evaluation of information under section 299 or 300 of the Act. The CARB is not persuaded by the Respondent's argument.

The CARB also considered the Respondent's argument that the need for detail in the Complaint Form is to facilitate dialogue between the parties. The CARB noted that there was no evidence before it which suggests that dialogue between the parties is mandatory and certainly nothing definitive that would place the burden of initiating such dialogue on the property owner.

The CARB notes that the Court of Appeal in *Boardwalk* urges compliance with the legislation. The Respondent has indicated that a very low threshold of compliance is required to meet the substantial compliance test, yet urges the CARB to dismiss the complaint for not meeting this low threshold. As indicated in *Boardwalk* at paragraphs 146, 147 and 151, the CARB should be working to ensure the parties' compliance, rather than punishment. The CARB also notes that the harsher the results of an interpretation, the stronger the presumption against it (*Boardwalk* paragraph 78).

The requirements with respect to filing a complaint as provided for under section 460(7), all find their genesis in the information shown on the assessment notice. Each of these requirements refers, directly or indirectly, back to the information contained within the assessment notice. These requirements and the Complaint information are as follows:

460 (7) (a) ***"Indicate what information shown on the assessment or tax notice is incorrect"*** Here the Complainant has identified 4 of the 10 matters listed in 460(5) as being the subject matters in its complaint. These are:

- An assessment
- An assessment class

- The type of property
- The type of improvement

460 (7) (b) ***"Explain in what respect that information is incorrect"***

- The Complainant indicates that the assessed value on this roll should only include non-linear property. The Complainant alleges that the assessment is overstated as it includes the value of linear property.

- The Complainant also provides further explanation as to why the Complainant is taking this position. First, the improvements on the roll as assessed include improvements which form part of the structures, installations, supporting structures, foundations, footings and other things pertaining to linear property. Secondly the value of these items should not be assessed as non-linear property.

- The Complainant also raises an issue of equity with similar assessments.

The CARB believes the Complaint has identified three major issues, those being:

1. The assessment includes items which are not assessable as "property" on the assessment roll.
2. The items referred to in 1) should be categorized as "linear property".
3. The assessment is not equitable with the assessments of similar property.

The Complaint also provides some clarification as to the underlying explanation for its position by stating that assessment includes "the improvements (that) form part of the structures, installations, supporting foundations, footings and other things pertaining to linear property".

While the Complainant argued that the Respondent should be reasonably well informed because of previous dealings between the parties on this subject the CARB notes that little evidence was led to show how previous communications or proceedings between the parties would allow the Respondent to understand the detail it is seeking in this application.

The CARB is satisfied that the complaint document provides issues which frame the complaint and that it also provides a minimal explanation in support of these issues. The Complainant, however, had received a spreadsheet from the Municipality at the time of the assessment notice, showing information including specific values for the 28 components which make up this assessment. Therefore, given the facts in this case and in keeping with the overall goal of the legislation and in particular with respect to section (5) of the Complaint Form wherein both grounds and issues are to be stated the CARB believes that some additional information is readily available and may be helpful and therefore directs: the Complainant to provided some additional information as outlined in the Board's decision provided above.

The Respondent also argues that 460 (7) (c) requires detailed information respecting background relative to the complaint.

460 (7) (c) ***"Indicate what the correct information is"***

In this case the assessment notice does not provide a delineated breakdown of each element assessed. The Complainant argues that it is only within the context of the assessment notice that corrected information is to be identified in accordance with section 460(7). Both parties agreed that the Complainant received a spreadsheet showing 28 components of the property and their respective share of the total assessment of $59,318,860. This document also included certain information on cost and depreciation factors. The Applicant suggested that even had the Complainant identified which of the 28 components is the subject of their complaint, that that may have met the minimum expectation respecting a low standard of compliance. However, the Complainant did not take this opportunity. The Complainant stood by their argument that this spreadsheet is not part of the assessment notice and further the information is deficient in assisting the Complainant to understand what items are include in each of the 28 components and how the assessment for each item has been arrived at in reaching the total for that component. The Complainant also argued that if the CARB were to find some deficiency in the complaint as it was filed, the penalty being requested by the Applicant is too harsh and draconian. The CARB has other remedies at its disposal such as directing the Complainant to perfect the complaint in some manner.

The CARB's view is that the baseline for the information required refers to information on the assessment notice. That is to say (section 460 (7) (c) *"Indicate what the correct information is"* refers to a correction of the assessment notice. If the spreadsheet showing the breakdown of the 28 components had been incorporated into the assessment notice the CARB would fine it easier to accept the Respondent's argument. The CARB concludes that the Complainant has provided its issues and grounds in response to section 460 (7) (b) and has only responded to section 460 (7) (c) by providing their requested value as that is all that needs to be corrected based on the detail showing on the assessment notice.

The CARB, however, has carefully considered the arguments advanced by the parties and has concluded, that while technically the substantive compliance test has been met, that because more detail information respecting the elements of the assessment were provided at the time the assessment notice was sent and given the availability of this information to the Complainant and further the fact that the merit hearing will be delayed, the Board has directed that the Complainant provided to the Respondent the information as detailed in the decision of the CARB as provided above.

Preliminary Matter #4 Merit Hearing and Disclosure dates and whether the CARB loses jurisdiction if the complaint is not heard before December 31

The parties both provided written submissions in relation to the merit hearing dates and disclosure dates. The Respondent provided information to the CARB in relation to the unavailability of one of its key witnesses and urged the CARB to set the matter over into the new year. The Respondent provided extensive submissions in relation to the jurisdiction of the CARB and argued that the CARB does not lose jurisdiction if the matter is not completed by the end of the year. The Respondent relied upon such cases as *Tolko, Rendezvous Inn,* and *Rahman.* The Respondent also referred the CARB to two previous CARB decisions from Edmonton and the Regional Municipality of Wood Buffalo in which those CARBs had considered section 468 of the MGA and the case authorities provided and had concluded that they did not lose jurisdiction if the matter was scheduled beyond December 31. The Respondent requested a hearing date commencing February 7, 2012 for a period of 4 days, with disclosure dates of October 14 for the Complainant, November 30 for the Respondent and rebuttal of January 6, 2012.

The Complainant concurred in the Respondent's submissions relating to the jurisdiction of the CARB and noted that it would not be taking a position that there had been any delay by the CARB and noted that it would not be seeking costs against the CARB.

In relation to hearing dates, the Complainant stated that it would be ready should the hearing be ordered to commence on November 28, 2011, but acknowledged the concerns of the Respondent in relation to witness availability and had no objection to the hearing commencing February 7, 2012. However, it disagreed with the disclosure dates urged by the Respondent. The Complainant urged the CARB to order disclosure dates in accordance with MRAC.

Decision

The merit hearing will be heard by the CARB on February 7, 2012 starting at 9:00 am in the Paintearth Administration building.

The exchange dates are as follows:

Complainant Disclosure	November 28, 2011
Respondent Disclosure	January 16, 2011
Complainant Rebuttal	January 30, 2012
Hearing date	February 7-10, 2012

All disclosure is due by 4:30 p.m. on the dates set out above, as is the usual practice of the CARB.

The parties may exchange electronic copies with hard copies to follow. The CARB will accept electronic copies on the dates, with 5 hard copies for distribution. The parties must send the hard copies to the CARB in advance of the hearing.

The written materials should comply with section 8 MRAC and contain will-say statements for any witness evidence.

The written materials must be page numbered and the parties should be conscious of the organization of the materials to assist the parties in finding references in the written materials.

Reasons

While the Complainant indicated that it could meet the suggested Merit hearing date of November 28, 2011 recommended by the CARB, it recognized the problems faced by the Respondent and fully supported the Respondent's request that the hearing be scheduled for late January or February 2012. The Complainant also agreed with the Respondent's authorities supporting the case that the CARB does not lose its jurisdiction to hear and decided the issues of a complaint heard after December 31. Further, the parties acknowledged that the CARB had attempted to have the matter heard before the end of the year, but was not able to do so.

Again, while acknowledging that decisions of other CARBs are not binding upon this CARB, this CARB finds that it does not lose jurisdiction if the matter is not concluded by the end of the year. Based on the reasoning in CARB Decision 023-2010P the CARB in this case adopts a similar reasoning of the facts and the law.

The multiple issues relating to several hearings requiring the time of both the same counsel and the same witnesses has convinced the CARB that it would not be fair to the Respondent to press for hearing dates early enough to allow the CARB time to issue its decision before December 31, 2011.

The decision of Justice A.W Germain in *City of Edmonton v Edmonton ARB* does not address section 468 of the Act in a direct manner, but does make it very clear that extending time to allow for procedural fairness would meet the "exceptional circumstances" requirement as expressed in section 15(1) of MRAC. This decision also found that greater consideration should be given when both parties are in agreement respecting a delay the proceedings to accommodate procedural fairness. In that case, as in the case before the CARB in this instance, one of the parties required addition time to prepare its case. In the subject case the Respondent indicated that it could not reasonably achieve its case preparation before the scheduled merit hearing date, which was proposed for November 28, 2011.

The CARB concludes that there is an exceptional set of circumstances which justify scheduling the merit hearing of this matter beyond December 31, 2011

The CARB will inform the Minister of this decision with reasons as rendered herein by the County of Paintearth CARB.

The CARB notes that since the hearing is scheduled to commence February 7, 2012, there is more time than the minimum time specified in MRAC. The CARB is prepared to direct that the timelines be altered to provide that both parties have more than the specified minimums to provide their arguments and rebuttals. The CARB notes that the parties have advised the CARB that one issue before the MGB on the Linear Complaint will be based on similar testimony, evidence and argument to that anticipated for the hearing before the CARB. Further, the

Complaint's disclosure could have met the hearing date of November 28 as suggested by the CARB. Therefore, the CARB finds that there is no prejudice to either party to meet the disclosure dates as set out above and it notes that both parties have been provided expanded deadlines upon which to file their materials.

DECISION SUMMARY

1. The Respondent's application to strike the Complaint on the basis of section 460(11) is dismissed.

2. The Respondent's application to strike the Complaint on the basis of the Complainant's non-compliance with section 460(7) and Section 2 of MRAC is dismissed.

3. The Complainant is directed to identify which of the 28 components set out on the Industrial Details is subject to the assertion or "grounds" that there are items within that component that contain "improvements (that) form part of the structures, installations, supporting foundations, footings and other things pertaining to linear property" and provide, where possible, an approximate percentage breakdown of linear and property. This is to be done by October 17, 2011 at 4:30 pm.

4. The merit hearing will be heard by the CARB on February 7, 2012 starting at 9:00 am in the Paintearth Administration building.

   The exchange dates are as follows:

Complainant Disclosure	November 28, 2011
Respondent Disclosure	January 16, 2011
Complainant Rebuttal	January 30, 2012
Hearing date	February 7-10, 2012

   All disclosure is due by 4:30 p.m. on the dates set out above, as is the usual practice of the CARB.

   The parties may exchange electronic copies with hard copies to follow. The CARB will accept electronic copies on the dates, with 5 hard copies for distribution. The parties must send the hard copies to the CARB in advance of the hearing.

It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 15th day of August, 2011.

P. Petry, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
R2	Letter from Reynolds Mirth Richards & Farmer dated July 20, 2011
C3	Letter from Bennett Jones dated July 27, 2011
R4	County of Paintearth's Legal Argument, Jurisdictional issue
R5	County of Paintearth's Authorities, Respondent's Volume of Authorities, Legislation Documents, Jurisdictional Issues
C6	Submission of AEC International Inc. in response to County of Paintearth No. 18 to Strike out Complaint
C7	Book of Authorities of AEC International Inc. in response to Application of County of Paintearth's No. 18 to Strike out Complaint
C8	Assessment Notice
C9	Minutes, dated Tuesday December 16, 2003 – Assessment Review CARB, County of Paintearth No. 18
C10	Letter from Bennett Jones dated August 2, 2011
R11	Letter from Reynolds Mirth Richards and Farmer dated Augu25 2, 2011 with attachments
C12	Letter from Bennett Jones dated August 3, 2011 with attachments

APPENDIX 'B"

ORAL REPRESENTATIONS

	PERSON APPEARING	CAPACITY
1.	A. Friend, Q.C.	Counsel for the Complainant
2.	C. Hall	Representative of the Complainant
3.	C. M. Zukiwski	Counsel for the Respondent
4.	Garth Lucas	Representative of the Respondent

Observers:

1.	Reeve G. Glazier	County of Paintearth
2.	B. Hepp	County of Paintearth
3.	T. Willowby	Assessor for the Respondent
4.	Councillor W. Webber	County of Paintearth
5.	Councillor D. Elliot	County of Paintearth
6.	Paula Hale	Articling Student, Shores Jardine LLP