

MUNICIPAL DISTRICT OF GREENVIEW NO. 16 BOARD ORDER CARB-02

IN THE MATTER OF A COMPLAINT filed with the Municipal District of Greenview No. 16 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:

Milner Power Inc. c/o AEC International Inc. (AEC) represented by Bennett Jones LLP –
Complainant

- and –

Municipal District of Greenview No. 16 (Greenview) represented by Reynolds Mirth Richards &
Farmer LLP - Respondent

BEFORE:

Paul Petry, Presiding Officer
Don Gourlay
Tom Burton

Board Counsel:

G. Stewart-Palmer, Barrister & Solicitor

Staff:

J. Squire, Composite Assessment Review Board Clerk
T. Marin, Assistant to Composite Assessment Review Board Clerk

A preliminary hearing was held on August 4, 2011 in Valleyview, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

156510	Assessment	\$9,609,260
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PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

This appeal relates to a property assessment for building and structure. The issue raised by the Complainant is that the assessed value of property on this roll number includes the value of linear property. 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 several preliminary issues, which are addressed below.

Preliminary Matter #1	Scheduling of preliminary hearing and Evidence Disclosure timelines
Preliminary Matter #2	Scheduling of merit hearing and Evidence Disclosure Timelines

The CARB heard full submissions on Preliminary Matter #1 and issued its decision on August 6, 2011 (provided to the parties on August 9, 2011). However, in relation to Preliminary Matter #2, the CARB requested that the parties provide further submissions (as set out below). The parties have provided further information to the CARB, which has considered the information and now provides its decision and reasons.

Preliminary Matter 2 – Scheduling of the merit hearing and Evidence Disclosure Timelines

On August 4, 2011, the CARB briefly heard from both counsel in relation to setting the hearing dates and disclosure dates for the merit hearing. Both counsel agreed that the merit hearing could be heard in the new year without a loss of jurisdiction by the CARB.

Both parties agreed to provide further submissions in writing to the CARB on the following matters:

1. The circumstances which would cause a delay of the merit hearing of this complaint until 2012;
2. The jurisdiction of the CARB to hear a complaint beyond the end of the year, in light of section 468 of the MGA and s. 15 MRAC;
3. Their position in relation to the role of the Minister of Municipal Affairs, in light of section 605 of the MGA; and
4. The length of time expected to be required for the hearing, possible start dates, witness availability, etc.

The parties agreed that the municipality is to provide its submissions on the above matters by 4:30 p.m. August 10, 2011 and the Complainant is to provide its submissions on the above matters by 4:30 p.m. on August 12, 2011. The parties may exchange electronic copies with each other and may send electronic copies to the CARB. For these materials in relation to Preliminary Issue #2, there is no need for hard copies to follow. However, the CARB directs each party to bring 2 hard copies of their submissions for the CARB's files on September 20, 2011.

The Parties have provided their submissions as requested by the CARB. The CARB has considered the submissions.

Decision

The Merit hearing will be heard by the CARB on April 16-19, 2012 at 9:00 am in the Greenview Administration building.

The exchange dates are as follows:

Complainant's Disclosure:	January 12, 2012
Respondent's Disclosure:	March 1, 2012
Complainant's Rebuttal:	April 5, 2012
Hearing Date:	April 16-19, 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.

Reasons for Decision:

The reasons or circumstances which may cause a delay of the merit hearing until 2012.

The CARB considered the reasons or circumstances which might cause a delay of the merit hearing until 2012. Those considerations include the following:

- Witness availability: There are a limited number of experts in this field. Therefore, there are few options for the parties in terms of the witnesses. The CARB has heard that the Respondent's witnesses have scheduling conflicts for hearing dates prior to the end of the year.
- Concurrent hearings on similar matters and the need to minimize conflicting commitments of the parties and their respective witnesses. The CARB heard from the parties that there is another hearing in a different municipality relating to similar issues. The same witnesses will be called. The parties are trying to coordinate the hearing schedules so that the witnesses will be available.
- A linear complaint is before the MGB on a similar matter and this is scheduled for hearing December 5 – 16, 2011. There is also a complaint before the CARB in the County of Paintearth on a similar matter which is scheduled for hearing February 7 – 10, 2012.
- The Complainant concurs with the Respondent's position and supporting submissions.
- The Complainant indicates that another challenge it faces is that of locating "as built" and construction drawings for the subject plant (Milner Plant)
- The CARB recognizes the guidance respecting procedural fairness to both parties as outlined by Justice Germain in the *City of Edmonton v Edmonton ARB*. Procedural fairness meets the "exceptional circumstances" requirement as expressed in section 15(1) of MRAC.

After considering the above matters, the CARB agrees with the parties that given the circumstances of this case and in order to ensure procedural fairness; the merit hearing must be set at a date beyond the end of the current physical year.

The jurisdiction of the CARB to hear a complaint beyond the end of the year, in light of section 468 of the MGA and s. 15 MRAC.

This CARB notes that decisions of other CARBs are not binding upon this CARB. However, the CARB has reviewed the reasoning of the CARB in the case of *CNRL v. Regional Municipality of Wood Buffalo*, CARB Decision 023-2010P in which that CARB heard submissions from the parties in terms of setting a hearing date beyond the end of the year. The circumstances of this

case are similar to the circumstances in that case. Based on the reasoning in that case, the CARB in this case adopts a similar reasoning of the facts and the law. This CARB finds that it does not lose jurisdiction if the matter is not concluded by the end of the year

The CARB notes that the Complainant concurs with the Respondent's position and supporting submissions.

The Respondent has referenced a number of cases which provide guidance to the CARB on the issue of the CARB's jurisdiction. In the *Tolko* case, the Court held that the MGB did not lose jurisdiction for failure to meet the timeline set out in the Act. That case dealt with the previous 150 day provision. The CARB has reviewed the other case law provided, which supports the position that the CARB retains jurisdiction.

The Complainant referenced *R v Harbour*:

The distinction between substantive and procedural requirements is often invoked. The reason underlying this distinction is that if the substantive prerequisites to obtaining a right or privilege have been fulfilled, the right or privilege has vested and should not be divested simply because of non compliance with procedural formalities.

The CARB notes that the MGA does not state the CARB loses jurisdiction if the hearing is not concluded by the end of the year. The interpretation of Section 438 of the MGA should not be so restrictive as to deprive the parties of their right to procedural fairness.

The CARB concludes it does not lose jurisdiction by virtue of section 468 and is able to schedule a hearing beyond December 31 of the year.

The role of the Minister of Municipal Affairs, in light of section 605 of the MGA.

In light of the CARB's findings with respect to the first two matters, a request to the Minister for an extension under 605(2) is not required. The CARB concluded, however, that the Minister should be informed of this matter through a letter explaining the basic reasons which support the hearing of this matter being set in 2012.

The CARB decision should also be provided wherein more complete reasons are set out.

The above reflects the Board's decision respecting communication with the Minister.

The length of time expected to be required for the hearing, and recommendations respecting potential hearing dates along with corresponding disclosure dates.

Based on availability of all concerned, both parties recommended April 16 – 19, 2012 for the merit hearing.

The Complainant argued that dates for disclosure should follow the provisions of MRAC.

The Respondent recommended the following dates:

Complainant's disclosure – November 25, 2011;

Respondent's disclosure – March 9, 2012;

Complainant's Rebuttal – March 16, 2012.

These dates were suggested as being fair to both parties and to deal with witness availability at appropriate points in the process.

The CARB heard no argument in relation to prejudice to either party should the disclosure dates be altered. Therefore, it 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.

The CARB has attempted to accommodate the prior commitments of the parties and witnesses, keeping in mind our duty of fairness to all concerned.

The CARB has accepted the parties' arguments with respect to party and witness availability in setting the merit hearing of this matter on April 16, 2012. The CARB believes the same focus on procedural fairness respecting the availability of witnesses at certain key points in the disclosure process should also be considered. While such sensitivity cannot always be considered, in this case there is now a longer time frame to accommodate the complexity of schedules. The CARB believes its decision respecting the schedule for disclosure is fair to both parties and has taken into account the availability of Mr. Andrews prior to the Respondent's disclosure deadline and Mr. Hall's availability prior to the rebuttal deadline.

DECISION

1. The Merit hearing will be heard by the CARB on April 16-19, 2012 at 9:00 am in the Greenview Administration building.

The exchange dates are as follows:

Complainant's Disclosure:	January 12, 2012
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Hearing Date:	April 16-19, 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.

2. The CARB will write to the Minister to advise him of the scheduling of the merit hearing in this matter.

MUNICIPAL DISTRICT OF GREENVIEW NO. 16 BOARD ORDER CARB-02

It is so ordered.

Dated at the City of Lethbridge, in the Province of Alberta, this 6th day of September, 2011.



P. Petry, Presiding Officer
APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO. ITEM

R1	Letter from C. Zukiwski to CARB with attachments dated August 9, 2011
C2	Letter from A. Friend, Q.C. to CARB with attachments dated August 12, 2011

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

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|----|-----------------|---|
| 1. | A. Friend, Q.C. | Counsel for the Complainant (via telephone) |
| 2. | C. Hall | Representative of the Complainant (via telephone) |
| 3. | C. M. Zukiwski | Counsel for the Respondent (via telephone) |
| 4. | R. Fortin | Counsel for the Respondent (via telephone) |

Observers:

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| 1. | B. Caldwell | Municipal District of Greenview No. 16 |
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