

Edmonton Composite Assessment Review Board

Citation: First Capital Holdings (ALB) Corporation, as represented by Altus Group Limited v The City of Edmonton, 2014 ECARB 01741

Assessment Roll Number: 2874006
Municipal Address: 1 Westmount Shopping Centre NW
Assessment Year: 2014
Assessment Type: Annual New

Between:

**First Capital Holdings (ALB) Corporation,
as represented by Altus Group Limited Altus Group Limited**

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF Lynn Patrick, Presiding Officer

Background

[1] The Board has determined that the assessment complaint with regard to the above roll number was filed on March 13, 2014. According to the Assessment Notice, the Notice was mailed on January 2, 2014 setting the 60 day complaint filing deadline at March 3, 2014 plus 7 days as prescribed for written notice or plus 14 days prescribed for written notice as set forth in section 23(1)(a) or (b) respectively of the *Interpretation Act*, RSA 2000 c. I-8, resulting in a deadline for filing of March 10, 2014 or March 17, 2014. The complaint in this matter was received by the Assessment Review Board Clerk on March 13, 2014. The address for mailing the Assessment Notice is in Ontario. A notice that the assessment notices were mailed on January 2, 2014 was published on January 2, 2014 in accordance with Section 311(1) of the MGA

Issue

[2] Is the complaint valid?

Legislation

[3] The *Municipal Government Act*, RSA 2000, c M-26 [MGA], reads:

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

- (c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person;

...

Publication of notice

311(1) Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.

- (2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

...

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

- (2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

...

Address to which a complaint is sent

461(1) A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on that notice.

...

Decisions of assessment review board

467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

[4] Schedule 1 of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 [MRAC] [the Complaint Form] reads in part:

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline or complaints without the required filing fee are invalid.

[5] Section 23(1)(a) of the *Interpretation Act*, RSA 2000 c.I-8 [*Interpretation Act*] states:

Presumption of Service

23(1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta, or

(b) subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada.

Decision

[6] The assessment complaint was filed within the time prescribed by the *MGA* and is therefore valid in that respect.

Reasons for the Decision

[7] The Respondent advised the Board that it did not intend to make representations in this matter, but that it wished to file its brief. Accordingly, the Board notes that there is a written disclosure document filed with the Board on June 9, 2014, and accepted by the Board into evidence, in which the Respondent states it is not in a position to comment on the Complainant's arguments in respect to the filing deadline issue.

[8] There are two Alberta Court of Queen's Bench cases that apply to the issue in this matter.

[9] In the *Calgary (City of) v. MGB*, 2004 ABQB 85 [*Calgary*], although the legislation was later amended it did not affect the conclusion of the Court that, for the purposes of the *MGA* notice provisions, being 'sent' means sent and received. The *Calgary* case also concludes that receipt of the Notice of Assessment is deemed to have occurred by virtue of the provisions of s. 311(2) of the *MGA*.

[10] The next issue to be addressed when determining a complaint deadline is the determination of when an Assessment Notice is received, which begins the period of 60 days within which to file a Complaint. The Court in *Calgary* turned to s. 23 of the *Interpretation Act* to determine that the Notice was deemed received 7 days from the date of mailing. In that case the complaint deadline became 37 days after the assessment notice was sent.

[11] The second case which applies to the issues in this matter is *Edmonton (City) v. ARB of the City of Edmonton*, 2012 ABQB 399 [*Wood*]. The Court reaffirmed that the principle in the *Calgary* decision that it is required in the interpretation of the period for filing a complaint that the *Interpretation Act* be applied. Although the Court did not need to apply s. 23 in the *Wood* case, it did acknowledge the section's importance and that it is the required procedure for the municipality to apply it in the determination of the validity of complaints.

[12] The Board accepts that *Wood* is binding upon it, and is the law applicable in the determination of the deadline for filing of complaints within the time established by the date required to be put on the assessment notices by s. 309 of the *MGA*.

[13] There are two CARB cases in which the *Wood* decision has been found to apply. The first is *City of Leduc Board Order No. 0200 01/2012* and the second is *City of Calgary CARB 73696 J/2013*. In both of those decisions s. 23 of the *Interpretation Act* was applied, resulting in a determination that the complaints were filed within the correct deadline for filing resulting in the complaints being valid.

[14] In this matter, s. 23 of the *Interpretation Act* provides that, for an out of Province mailing address, 14 days from the date of mailing is the deemed receipt date. This results in a 74 day period concluding on March 17, 2014 for complaint filing. The date in which this Complaint was filed is uncontested as at March 13, 2014 and thus is a valid complaint.

Heard June 16, 2014.

Dated this 25 day of June, 2014, at the City of Edmonton, Alberta.



Lynn Patrick, Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.