

**BOARD ORDER: MGB 019/07**

**IN THE MATTER OF THE** *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**AND IN THE MATTER OF COMPLAINTS** submitted by the City of Calgary in regard to 2006 (tax year) linear property assessments.

**BETWEEN:**

The City of Calgary - Complainant

- a n d -

Minister of Alberta Municipal Affairs as represented by Sharek Logan Collingwood van Leenen LLP - Respondent

**BEFORE:**

Members:

D. Thomas, Presiding Officer  
L. Patrick, Member  
R. Scotnicki, Member

Case Manager:

M. d'Alquen

This decision relates to a complaint filed with the Municipal Government Board (MGB) by the Complainant regarding the assessments of linear properties within its municipal boundaries for the 2006 tax year. The complaint affects all properties listed on the linear assessment roll for the City of Calgary. The hearing was held in the City of Calgary in the Province of Alberta from November 27 to November 29, 2006 after due notice to the affected parties.

**OVERVIEW**

*Complainant*

The Complainant raised three objections to the linear assessments prepared by the Respondent. First, it argued that the valuation standards underlying the assessments are not legally effective, because they were not established by regulation as required under the Act.

## **BOARD ORDER: MGB 019/07**

Second, it argued that a large proportion of the linear property assessment notices issued by the Respondent do not meet the requirements of section 303(a) of the Act, because they contain an inadequate description of the assessed property.

Third, it argued that the linear property tax notices issued by the Respondent do not meet the requirements of section 303(g) of the Act, because they do not include an indication of school support (public or separate).

### *Respondent*

In reply to the Complainant's first argument, the Respondent submitted that the effectiveness of the valuation standard for linear property is *res judicata* and subject to issue estoppel. In the alternative, it submitted that the assessments were prepared through proper application of the relevant valuation standards and legislation.

In reply to the Complainant's second argument, the Respondent submitted that section 303(a) does not apply to linear property. In the alternative, if it does apply, the nature of linear property is such that the descriptions on the assessment roll and assessment notices are sufficient to describe its location.

In reply to the Complainant's third argument, the Respondent submitted that section 303(g) does not apply to linear property. In the alternative, if it does apply, it noted that school support notices are not mandatory, and are provided by property owners to municipalities such as the Complainant rather than to the provincial government.

## **BACKGROUND**

### **Parties and Affected Property Owners**

#### Parties

The Complainant is the City Calgary, which contains many linear properties within its boundaries.

The Respondent is the Assessment Services Branch of the Alberta Ministry of Municipal Affairs, which is responsible for preparing assessments for all linear property within the Province of Alberta.

#### Affected Property Owners

Because the complaints relate to all linear properties within the Complainant's municipal boundaries, this hearing had the potential to affect all owners of linear property in Calgary. Accordingly, all affected property owners were given notice of the hearing as well as an

## **BOARD ORDER: MGB 019/07**

opportunity to make submissions. Allstream Inc. was the only affected third party to make submissions to the merit hearing panel.

### **Assessment of Regulated and Non-regulated Property**

#### Regulated property

The *Matters Relating to Assessment and Taxation Regulation* (MRAT) requires regulated properties to be assessed by following procedures set out in the Minister's Guidelines Regarding the Assessment of Farm Land Linear Property Machinery and Equipment and Railway Property (Minister's Guidelines). Historically, the Minister's Guidelines have been prescribed annually by Ministerial Order. As the full name of the Minister's Guidelines suggests, regulated property includes: farmland, railway, machinery and equipment (M&E) and linear property. Linear property itself contains various subgroups, including pipelines, telecommunications systems, electric power systems and street lighting.

#### Non-regulated property

MRAT requires non-regulated property to be assessed at market value and does not refer the assessor to procedures in the Minister's Guidelines for the purposes of valuation. Non-regulated property includes residential and non-residential improvements and land.

### **Preliminary Hearings**

The MGB held several preliminary hearings to identify issues and establish a process for exchange of information and dates for the merit hearing. These resulted in Decision Letters DL 060/06, DL 079/06, DL 113/06, DL 134/06, and DL 150/06. During these preliminary hearings, the parties identified the two issues that ultimately formed the focus of this merit hearing, namely: (1) the adequacy of the description of property appearing on linear assessment notices and (2) identification of properties as assessable for public or separate school purposes. However, they also indicated that the main issue would be the effectiveness or validity of the regulated assessment valuation standard. This issue has been informally termed the "validity of the Minister's Guidelines" question, and has been considered by the MGB on previous occasions, including MGB 076/06 and MGB 094/06. In addition, the validity of the Minister's Guidelines question has now been placed before the Courts in the context of a judicial review application of MGB 076/06 and a statement of claim filed by the City of Calgary.

#### Transcripts from previous hearings

With respect to the issue of the validity of the Minister's Guidelines, the Complainant requested that it be allowed to rely on transcripts taken from previous MGB Merit hearings where the issue had been raised. As recorded more fully in DL 113/06, the MGB agreed to allow transcript evidence from previous hearings provided the material was identified specifically before hand by

## BOARD ORDER: MGB 019/07

page and line number; in addition, the MGB communicated its expectation that parties would present their arguments anew in the context of the present hearing and not simply rely on summaries of argument or written legal submissions entered at prior hearings.

### ISSUES

1. Were the linear assessments under complaint prepared using a valuation standard duly established pursuant to the authorizing legislation?
2. Do the linear property descriptions on the linear assessment notices and linear assessment roll meet with the requirements of the Act? If not, what remedy is appropriate?
3. Did the Respondent indicate on the linear assessment notices whether properties were assessable for public or separate school purposes? If not, does this absence constitute a breach of section 303 of the Act? If so, what remedy is appropriate?

### LEGISLATION

In order to resolve this complaint, the MGB examined the relevant legislation including the following provisions.

#### *Municipal Government Act*

Section 492 permits a municipality to file a complaint regarding the description of property on an assessment notice.

*492(1) A complaint about an assessment for linear property may be about any of the following matters, as shown on the assessment notice:*

- (a) the description of any linear property;*

Section 309 sets out requirements for the contents of an assessment notice

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

- (a) the same information that is required to be shown on the assessment roll;*
- (b) the date the assessment notice or amended assessment notice is sent to the assessed person;*
- (c) the date by which a complaint must be made, which date must not be less than 30 days after the assessment notice or amended assessment notice is sent to the assessed person;*
- (d) the name and address of the designated officer with whom a complaint must be filed;*
- (e) any other information considered appropriate by the municipality.*

*(2) An assessment notice may include a number of assessed properties if the same person is the assessed person for all of them.*

## BOARD ORDER: MGB 019/07

Section 303 sets out requirements for the contents of an assessment roll.

*303 The assessment roll must show, for each assessed property, the following:*

- (a) a description sufficient to identify the location of the property;*
- (b) the name and mailing address of the assessed person;*
- (c) whether the property is a parcel of land, an improvement or a parcel of land and the improvements to it;*
- (d) if the property is an improvement, a description showing the type of improvement;*
- (e) the assessment;*
- (f) the assessment class or classes;*
- (f.1) the liability code assigned by the assessor, in the form and manner prescribed by the regulations;*
- (g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 156 of the School Act;*
- (g.1) if the property is linear property, the date the Minister declares the linear property assessment complete;*
- (h) if the property is exempt from taxation under Part 10, a notation of that fact;*
- (i) any other information considered appropriate by the municipality or by the Minister, as the case may be.*

Section 292 requires assessments of linear property to reflect the valuation standards set out in the regulations for linear property.

*292(1) Assessments for linear property must be prepared by the assessor designated by the Minister.*

*(2) Each assessment must reflect*

- (a) the valuation standard set out in the regulations for linear property, and*

### ***Matters Relating to Assessment and Taxation Regulation (MRAT) (AR 220/2004)***

Section 8 of MRAT indicates the valuation standard for linear property is that calculated in accordance with the procedures contained in the Linear Property Assessment Minister's Guidelines

*8(1) The valuation standard for linear property is that calculated in accordance with the procedures referred to in subsection (2).*

*(2) In preparing an assessment for linear property, the assessor must follow the procedures set out in the Alberta Linear Property Assessment Minister's Guidelines.*

**ISSUE 1: Were the linear assessments under complaint prepared using a valuation standard duly established pursuant to the authorizing legislation?**

**Complainant's Position**

The Complainant submitted that the 2005 Minister's Guidelines were improperly constituted and therefore do not establish legally effective valuation standards or procedures. Consequently, the linear assessments based upon procedures in the Minister's Guidelines are themselves without legal foundation. In order to correct this situation, the Complainant requested that the assessments be recalculated on a market value standard, similar to non-regulated property assessable under the Act.

The Complainant acknowledged that the issue of the validity of the Minister's Guidelines has been addressed and decided at previous MGB hearings. However, it submitted that as an administrative tribunal, the MGB is not bound by its previous decisions and suggested that each complaint lies on its own circumstances and merits. Furthermore, the Complainant submitted that MGB 076/06 and MGB 094/06 were wrongly decided, since they found that MRAT establishes a valuation standard for linear property even though (1) it is not possible for the assessor to prepare an assessment using MRAT alone, and (2) the Minister's Guidelines contain the numerical factors and other substantive information required to calculate an assessment. Finally, the Complainant noted that the Lieutenant Governor in Council has recently introduced Order in Council OC 498/06, which the MGB has not yet considered. The Complainant's position on this point was that OC 498/06 does not provide a remedy to the Respondent's illegal assessments; rather, it creates new problems - notably by purporting to apply retroactively contrary to the presumption against retroactivity.

Apart from OC 498/2006, the Complainant made no further arguments concerning the validity of the Minister's Guidelines, but instead provided a compendium of transcripts containing all the legal proceedings and arguments that have been before the MGB on prior occasions in relation to that issue.

**Summary of Allstream's Position**

Allstream agreed with the Complainant that since the MGB is not a court, it is not bound by precedent and issue estoppel should not apply. In any event, it said the application of issue estoppel would not be consistent with MGB practice, since the MGB has reheard matters on previous occasions. For example, having heard and decided the issue of assessability of feature software in MGB 099/99, the MGB later reheard the same issue between the same parties for a subsequent assessment year. Finally, Allstream noted that the material considered by previous MGB panels relating to the validity of the Minister's Guidelines differs from that now before the MGB, since OC 498/2006 had not been issued at the time of the previous hearings.

## **Respondent's Position**

The Respondent emphasized that the MGB has decided the matter of the Minister's Guidelines on several occasions, including MGB 094/06, MGB 076/06 and MGB 124/04. Under these circumstances, it said that allowing the Complainant to relitigate the matter would be an abuse of process.

In support of its position, the Respondent cited Mary Danyluk v. Ainsworth Technologies Inc. et al [2001 SCC 44], as support for the proposition that an issue once decided should not be relitigated to the benefit of the losing party, and that - in the context of administrative tribunals - the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided. The Respondent also submitted that the three preconditions for issue estoppel (as laid out in Angle v. Minister of National Revenue [1975] 2 SCR 248) are all fulfilled, since

1. the same question has been decided previously;
2. the decision which is said to have created the estoppel was final, and
3. the parties to the decision were the same persons as the parties to the present proceedings, namely: the City of Calgary and the Minister of Municipal Affairs.

The Respondent also made reference to the MGB's directions in DL 113/06, where the Complainant was ordered to identify the portions of transcripts from previous hearings upon which it intended to rely, and to argue matters afresh rather than simply refer to summaries of legal arguments considered at earlier hearings. The Respondent suggested that the Complainant's submissions regarding the validity of the Minister's Guidelines question are merely voluminous reproductions of material submitted to previous panels, and do not conform to the MGB's instructions in DL 113/06.

Finally, the Respondent argued that if the MGB is inclined to rehear the matter, it should come to the same conclusion that it did on prior occasions, namely: that the assessments were prepared in accordance with properly constituted valuation standards. Furthermore, it said OC 498/2006 now gives even further assurance that the prescribed valuation standards are legal and effective.

## **Findings**

The decision in MGB 076/06 was final, between the same parties as the parties to the current complaint, and concerned the identical issue that has been raised in the current complaint.

## BOARD ORDER: MGB 019/07

No new evidence or argument was presented that might cause the MGB to depart from its previous decisions and supporting rationale regarding the effectiveness of the valuation standards and procedures established under the relevant legislation.

### Reasons

As recorded in DL 113/06, the Complainant requested that it be permitted to present transcript evidence from prior MGB hearings relating to the validity of the Minister's Guidelines question. It indicated that submissions presented at prior hearings had varied according to the counsel and parties involved, and that admitting material from the prior hearings would have the advantage of allowing the Complainant to collect and focus the divergent information to help the MGB to make a fully informed decision in the context of a single expeditious process.

Against this background, the MGB permitted the Complainant to introduce transcripts from prior proceedings, provided they were first identified by page and line number, and provided arguments were presented afresh in the context of the current complaint. The intent of these directions was to promote clarity by having the parties submit their positions anew with the benefit of hindsight as to previous arguments made and without the expense of calling witnesses to repeat evidence.

The MGB's expectations were not entirely fulfilled, as the Complainant copied extensive portions of transcripts and other material from previous hearings and made no attempt to focus the approaches taken in previous hearings. Neither was any attempt made to offer new argument or fresh perspectives on the "validity of the Minister's Guidelines" for consideration by the MGB.

While the Complainant did suggest that MGB 076/06 and MGB 094/06 were wrongly decided, its main stated objection to those orders was that the Minister's Guidelines contain the rates, cost factors and so on used to prepare assessments. Thus, it was argued that the valuation standards are really in the Minister's Guidelines as opposed to MRAT, contrary to the findings of the previous MGB decisions. In short, it submitted that the Minister's Guidelines – although described as procedures – are in fact substantive valuation standards. This issue was dealt with in comprehensive fashion in Board Order MGB 076/06, particularly at page 67 and following, under the heading "What is a standard?". The MGB is still in agreement with the analysis outlined there and further explanation here would be superfluous.

The Complainant also suggested that MGB 076/06 and MGB 094/06 did not address arguments regarding incorporation by reference and in particular, that the *Regulations Act* stipulates that documents incorporated by reference are not themselves regulations. A review of those orders shows that the question of referential incorporation was dealt with and all relevant arguments addressed. For example, comprehensive reasons regarding this issue are to be found in Board Order MGB 076/06 at page 65 and following. The MGB is still in agreement with this analysis and again, further explanation here would be superfluous.



## **BOARD ORDER: MGB 019/07**

In view of the above, the MGB accepts the Respondent's essential point that to review the identical arguments and evidence presented previous hearings is not an appropriate use of MGB resources. It would also appear that the three preconditions for issue estoppel as enunciated in Angle apply, since a final decision regarding the same issue between the same parties was rendered in MGB 076/06. While the MGB believes that the current circumstances may be appropriate for the application of issue estoppel, it will exercise caution in applying that principle when new arguments or evidence are presented that may give a fresh perspective on a previously litigated issue. Such was not the case in this instance. The MGB recognizes that new material was submitted on the matter of OC 498/06; however, there is no reason to consider this avenue of argument, since it has already been determined on other grounds that the valuation standards and procedures used by the Respondent to prepare the assessments were effective.

**ISSUE 2: Do the linear property descriptions on the linear assessment notices and linear assessment roll meet with the requirements of the Act? If not, what remedy is appropriate?**

### **Summary of the Complainant's Position**

Section 492 of the Act gives the Complainant the right to make a complaint about the description of linear property on a linear assessment notice. Further, section 309(a) indicates that an assessment notice must contain the same information as an assessment roll. Finally, section 303(a) requires the assessment roll to provide, for each assessed property, description sufficient to identify the location of the property. Against this legislative background, the Complainant argued that the linear assessment notices and roll failed to provide proper descriptions of each linear property, as required under sections 303(a) and 309(a) of the Act. Therefore, it requested that the Minister be directed to correct the linear assessment roll by supplying appropriate descriptions.

In support of its request, the Complainant pointed out that over 60% of the assessed properties on the linear assessment roll contain no indication of the location of the assessed property, other than that they are within the City Calgary. It also noted that addresses are provided for some property owners (eg. for Bell Mobility), but not for others (eg. Telus), and suggested there is no satisfactory explanation for the difference in treatment.

The Complainant rejected the Respondent's suggestion that 303(a) applies only to non-regulated property assessment rolls, and not to the linear assessment roll. It noted that linear property is referred to throughout Part 9 of the Act, which includes section 303 and deals with the assessment of both linear and non-linear property. It also noted that other portions of section 303 clearly apply to linear property – notably 303(g), and suggested the Respondent cannot choose to ignore those portions of the section that do not suit its purposes for the sake of administrative convenience.

## BOARD ORDER: MGB 019/07

In further support of its request, the Complainant noted that in Canada Lands v Alberta (Municipal Government Board) 2006 ABQB 293, [2006] the Alberta Court of Queen's Bench took the view that it was appropriate in the circumstances of that case for the MGB to order the Respondent to correct the roll by providing a proper description of assessed property. It also pointed to the evidence of Mr. John Lindsay - a senior assessor with the City of Calgary. He testified that the Complainant pays the Respondent to prepare the linear property assessments. Furthermore, he said that since property cannot be subject to both linear and business assessments, the City requires information concerning the location of property that has already been assessed as linear property when determining whether to apply a business assessment.

Finally, the Complainant suggested that regardless what use is made of the information, the Act requires a proper description to be on the roll and it should therefore be provided. In this regard, the Respondent suggested that transparency is a cornerstone of any kind of taxation regime. Thus, descriptions are required to ensure municipal assessment and taxation is public.

### **Respondent's Position**

#### 303(a) not applicable to linear property

The Respondent acknowledged that section 492 of the Act gives the Complainant the right to make a complaint about the description of linear property on a linear assessment notice. Further, it acknowledged that section 309 indicates that an assessment notice must contain the same information as an assessment roll. However, it argued that the linear assessment roll is distinct from the assessment roll, and that most of the requirements in section 303 (including 303(a)) only apply to the assessment roll. In support of this argument, it noted that section 302 provides for two different rolls: one for "assessed property" and one for "assessed linear property". Similarly, it noted that assessed property and assessed linear property are accorded different assessment procedures and responsibilities throughout the relevant portions of the Act. One must therefore distinguish between two kinds of property – "assessed property" on the one hand and "assessed linear property" on the other.

Having distinguished between linear property and other kinds of assessed property, the Respondent noted that the precise wording of section 303 is that the "assessment roll must show for each assessed property, the following ...". Since section 303 makes no specific reference to "assessed linear property", the Respondent suggested that it does not apply generally to linear assessed property. Further, while section 303 (g.1) mentions linear property specifically, this specific reference merely goes to show that the rest of 303 applies only to "property". Thus, 303(a) does not apply to linear property, and section 309(1)(a) - which requires assessment notices to contain the same information as the assessment roll - does not require linear assessment notices to contain a location description. Finally, section 492(1) – which permits complaints about assessment notices – cannot support a complaint on the basis of the absence of such a description.

## BOARD ORDER: MGB 019/07

In further support of its interpretation, the Respondent noted that the wording of 309(1)(e) indicates that assessment notices must include “any other information considered appropriate by the municipality”. Municipalities are not responsible for creating linear assessments or linear assessment notices; therefore, section 309, including 309(1)(a), applies only to property assessments and property assessment notices, again breaking the chain between section 492 and section 303(a).

### Property identified sufficiently

The Respondent’s second main argument was that even if section 303(g) does apply to linear property, the location of the property in question has been identified sufficiently. A sufficient description for the purposes of the Act must take into account the information that is available and the practicalities of the situation the parties are faced with. In this regard, one must recognize that linear property is often circular or continuous and may be either above or below ground. Such characteristics do not lend themselves to a specific municipal address, lot, block and plan address, or description by quarter section, township and range.

Given that some 500,000 linear properties are assessed every year, it would not be practical or cost effective to describe the precise location of each. The Respondent has made reasonable efforts to obtain property descriptions from property owners, and - in appropriate circumstances - has initiated court proceedings to obtain it under section 296. However, as shown by the responses to the request for information circulated along with DL 079/06, even the owners or operators from whom the Respondent must ultimately obtain the data do not always have the information requested.

Under the circumstances described above, the Respondent submitted that a property description indicating that certain linear property is located in the City of Calgary is sufficient to satisfy the requirements of section 303(a), should it be deemed to apply. These circumstances are far different from those considered in the Canada Lands case relied on by the Complainant, where the land in question was the site of the former Griesbach military base, which has a precise and easily identifiable location.

As a final alternative argument, the Respondent noted that the Act itself recognizes the practical difficulties the Respondent faces when gathering information in relation to assessments. Thus, section 295(2) indicates that if information is not provided in accordance with request for information, the assessor must prepare the assessment using whatever information is available. Furthermore, 306 indicates that the fact that any information shown on the assessment roll contains an error, omission or misdescription does not invalidate any other information on the roll itself. Therefore, any deficiency the MGB may find regarding the property descriptions provided should not be used grounds to invalidate the assessments or the assessed amounts themselves.

## **Findings**

Section 303(1)(a) applies to the linear property roll.

Section 309(1)(a) applies to linear property notices.

## **Reasons**

Does section 309(1)(a) apply to linear property assessment notice?

Section 492(1)(a) gives assessed persons and municipalities the right to complain about the description of property on a linear assessment notice. The Act specifies requirements for assessment notices in section 309. That section makes no specific distinction between linear assessment notices on the one hand and assessment notices on the other. The question arises as to whether “assessment notice” in 309 is intended to capture “linear assessment notice” so that the requirements for the assessment roll listed in section 309 apply to both.

As noted by the Respondent, it is clear that section 309(1)(e) does not apply to linear assessment notices, since 309(1)(e) requires the inclusion of information deemed necessary by the municipality rather than by the Minister, who is responsible for linear assessment notices. On the other hand, there is no similar reason why subsections of 309(1)(a) should not be taken to apply to linear assessment notices. Furthermore, the Act must intend to give meaning to the right to complain about the property description under section 492(1)(a), and this right can only have meaning if there are description requirements for linear property on assessment notices. Although section 309 does not refer specifically to linear property, it is the only provision in the Act that (when read in conjunction with section 303(a)) identifies any requirement for assessment notice property descriptions. Thus, if the right of complaint is to have meaning, it would appear that section 309 must apply to both linear and ordinary assessment notices.

The MGB accepts the Respondent’s point that assessed property and assessed linear property are accorded different assessment procedures and responsibilities throughout the Act. In general, linear property is assessed by the Minister according to the Linear Property Minister’s Guidelines, while most other property is assessed by the municipal assessor on a market standard. Having said this, the Act does not differentiate consistently between the linear and non-linear assessment spheres. In particular, the MGB notes that definition of “assessment” under section 284(1)(c) does not distinguish between a “linear assessment” and a property assessment, but simply reads, “a value of property determined in accordance with this Part and the regulations.” Similarly, the definition of assessor in section 284(1)(d) includes both the DLA and municipal assessors. Thus, the duties and rights under sections 293 to 296 would appear apply to both, as would the ability to correct rolls and assessment notices under sections 305 and 312.

In summary, the MGB does not accept that section 309(1)(a) of the Act is intended to apply only to assessment notices prepared by municipalities. The principle that specific legislative

## **BOARD ORDER: MGB 019/07**

provisions take precedence over general ones does not apply in the present circumstances, since the wording of section 309(1)(a) does not suggest that it is of specific application. If the Legislature had intended such a result, it could have indicated that the requirements outlined in section 309 apply only to assessment notices for property other than linear property. In the absence of such wording, the MGB is unwilling to imply such a restriction and deems the requirements to apply – where practicable - to both assessment notices and linear assessment notices.

### Does section 303(a) apply to the linear assessment roll?

Having concluded that section 309(1)(a) applies to linear assessment notices as well as real property assessment notices, the MGB must consider requirements for assessment rolls as laid out by section 303. Some of the requirements of section 303 clearly apply to linear assessment rolls (eg. subsection (1)(g.1)), while others do not (eg. subsection (1)(c) and (1)(d)). Still others – such as section 303(1)(a) - appear applicable to both. With respect to section 303(1)(a) in particular, the MGB finds that similar considerations are relevant to its applicability to the linear assessment roll as were identified above in relation to the applicability of section 309(1)(a) to linear assessment notices.

In addition to such considerations, the MGB notes that the requirement to provide a location description for linear property has a logical purpose, since it helps interested parties determine whether business taxes are applicable to a given property. For example, as indicated by Mr. Lindsay, municipalities must be able to identify properties subject to linear taxation, because property cannot be subject to both linear and business tax simultaneously.

To sum up, the MGB finds that in the absence of explicit wording in the legislation to the contrary, the requirement to provide a description sufficient to identify location applies to the linear assessment roll as well as the property assessment roll.

### Was a sufficient description included on the assessment roll and the assessment notice for linear properties located in the City of Calgary?

The Respondent argued that “Calgary” is a sufficient description of property location where that property is linear in nature. The MGB agrees that in some cases, such a description would be sufficient. As argued by counsel for the Respondent, streetlights and extensive underground stretches of fiber-optic cable are examples of property for which identifying the municipality where they occur may well constitute a sufficient description of the property’s location for the purposes of the Act. In this connection, the MGB notes that property such as lengths of wire or fibre optic cable would not likely be subject to business tax, so that the reason identified by Mr. Lindsay for describing a property’s location would not apply.

On the other hand, where the linear property is of a more localized nature, further description of location may well be appropriate. While the MGB accepts the evidence of Ms. Uttley that the

## BOARD ORDER: MGB 019/07

Respondent has attempted to obtain the required information from the relevant property owners, it appears there are still some deficiencies on the roll. The Calpine electrical generation plant is notable example of a linear property for which more specific location descriptor would be useful. In addition, the MGB notes that locations for many linear properties belonging to Bell and Rogers are available, whereas none are provided for Telus Mobility. Given the similarities between operators such as Telus and Bell, it seems highly probable that some of the Telus properties enumerated on the roll warrant further description of location.

### **If not, does the breach warrant an order by the MGB to correct the roll?**

The MGB clearly has the authority to order the Respondent to change the description of the property shown on the roll (Canada Lands v Alberta (Municipal Government Board) 2006 ABQB 293, [2006]). However, having considered the circumstances of the present case, the MGB finds that such an order would be of no practical use or effect, and that in any event the MGB does not have sufficient information to order a correction. In this connection, the MGB notes that

1. it is unclear from the evidence before it which roll numbers require further description as to location and which do not.
2. Some of the properties under appeal likely defy further description.
3. It appears that for many properties, the information requested is not yet known to the property owners themselves, and hence cannot be placed on the roll. Thus, at page 4 of DL 079/06, the following comments from a representative of a linear property operator are recorded:

... the representative for Bell West explained that while owners and service providers are working with the Respondent to establish systems to track the requested information, these systems are costly and in some cases require resources that are not yet in place. Therefore, in some cases, it may be years before the requested information becomes available.

4. The effect of the breach appears to be a relatively minor administrative inconvenience. Thus, Mr. Lindsay indicated that the Complainant has managed administratively for the last 75 years without further descriptions and has a good relationship with the DLA, so that problems can be resolved when encountered.
5. As indicated by Mr. Lindsay, the principal practical reason for requesting a further identification of location is to avoid subjecting the same property to both a business and a linear assessment. It appears likely that property owners are in a good position to object should they receive both a linear and a business assessment notice. Thus, this problem likely self correcting, although subject to a degree of administrative inconvenience.

## BOARD ORDER: MGB 019/07

6. Section 306 of the Act provides that error or omission on the roll does not invalidate other information on the roll, including the assessment. Therefore, the assessment is not invalidated by virtue of the failure to provide a property description.

In view of these considerations, the MGB finds that although there has been a breach of section 303(a) of the Act, the effects of the effects of this breach are neither dramatic nor far reaching and an order to correct the roll would be of no practical use or effect. Thus, the MGB is unwilling to issue such an order at this time. Having said this, the MGB strongly encourages the Respondent to resolve the deficiencies in description. The MGB notes that where appropriate, the Respondent has several means at its disposal to remedy the situation. Where precise addresses are not suited to the characteristics of the linear property in question, the nature of the property could be disclosed on the roll to explain the absence of an address. In addition, the MGB notes that the Minister has the power to issue requests for information and to apply for court orders to enforce these requests. The Minister also has the power under section 322(e.2)(i) to make regulations indicating what information must be shown on the roll. In view of these powers and opportunities, the MGB expects the matter will be resolved in due course without the necessity for the MGB to intervene.

**ISSUE 3: Did the Respondent indicate on the linear assessment notices whether properties were assessable for public or separate school purposes? If not, does this absence constitute a breach of section 303 of the Act? If so, what remedy is appropriate?**

### **Complainant's Position**

The Complainant submitted that the Respondent's linear assessment notices and linear assessment roll failed to indicate whether property is assessable for public school purposes or separate school purposes, as required under section 303(g) and 309(a) of the Act. Accordingly, it requested that the Minister be directed to correct the linear assessment roll by supplying appropriate descriptions.

In support of its application, the Complainant drew the MGB's attention to section 303(g) of the Act, which indicates the following:

- 303 The assessment roll must show, for each assessed property,
  - (g) whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 156 of the *School Act*.

The Complainant pointed out that none of the properties on the linear property roll show whether the property in question is assessable for public or separate school purposes. Further, it submitted that the Respondent had an obligation to ask the municipality for notices provided under section 156 of the *School Act* to determine whether they should be recorded on the roll.

### **Respondent's Position**

The Respondent repeated that in its view, the bulk of section 303, including section 303(g) does not apply to linear property. In addition, it then drew the MGB's attention to two aspects of section 156 of the *School Act*, which indicates that that a corporation or individual may give written notice to a municipality that all or a portion of its property is assessable for public or separate school purposes. First, the Respondent stressed that the wording of the section is permissive in that it does not require notice to be given. Second, the section contemplates that notice be given to the municipality and not the Province.

In view of the permissive nature of the provision, the Respondent suggested that the Complainant must show that notices in respect of school support were in fact given to the municipality before it can claim that the Respondent failed to record them on the roll. In this regard, it noted that there is no evidence before the MGB that any such notices were in fact given.

In view of the fact that section 156 contemplates that notice be given to the municipality rather than the Province, the Respondent suggested that if the information was given, it now resides with the municipality. Thus, the Complainant cannot be heard to complain that the Minister has not provided school support information. Any such information would have already been received by the municipality under the *School Act* and – as confirmed by Ms. Uttley - has not been forwarded to the Minister.

### **Findings**

There is no evidence that the municipality received notices from linear property owners regarding school support under section 156.

Accordingly, there is no evidence that the Respondent failed to indicate on the linear assessment notices and linear assessment roll whether property is assessable for public or separate school purposes pursuant to section 303(g) of the Act.

### **Reasons**

As indicated above, section 303(g) of the Act requires assessment roll to show, for each assessed property,

“whether the property is assessable for public school purposes or separate school purposes, if notice has been given to the municipality under section 156 of the *School Act*.”



## **BOARD ORDER: MGB 019/07**

Without deciding whether section 303(g) applies to linear property, the MGB notes that section 303(g) only requires the roll to show whether the property is assessable for public or separate school purposes if notice has been given to the municipality under section 156 of the *School Act*. Pursuant to section 156(1) and 156 (5) of the school Act, such notices – if they are given at all - must be written, and provided to the municipality. The Complainant did not produce any section 156 notices in respect of linear property or otherwise show that such notices had been given. Indeed, Mr. Lindsay candidly indicated that he was not aware whether the City of Calgary receives any indication of school support in relation to linear property.

Accordingly, assuming that 303(g) applies to linear property, there is no evidence before the MGB of any deficiency in the roll or the notices in respect of section 303(g) and 309(a) of the Act.

### **DECISION**

In view of the reasons and findings expressed above, the complaints are denied. As a practical consequence, and in the absence of evidence to suggest the assessment amounts are incorrect, the assessments are confirmed. This confirmation is subject to decisions concerning complaints that may have been filed independently by other parties in relation to the same property.

No costs to any party.

Dated at the City of Edmonton, in the Province of Alberta, this 8<sup>th</sup> day of March 2007.

MUNICIPAL GOVERNMENT BOARD

---

(SGD.) D. Thomas, Presiding Officer

**APPENDIX "A"**

**APPEARANCES**

<b>NAME</b>	<b>CAPACITY</b>
L. Gosselin	Counsel for the Complainant
S. Trylinski	Counsel for the Complainant
J. Lindsay	Witness for the Respondent
G. Sharek	Counsel for the Respondent
A. Jewell	Counsel for the Respondent
C. Uttley	Witness for the Respondent

**APPENDIX "B"**

**DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:**

<b>NO.</b>	<b>ITEM</b>
1-A	Letter from City of Calgary to MGB dated March 16, 2006 with attached bundle of faxed copies of Linear Property Assessment Notices
2-A	Letter from City of Calgary to the MGB dated March 30, 2006
3-A	Bundle of MGB Decision Letters 060/06, 079/06, 113/06, 134/06, 150/06
4-A	Document entitled "Index to electronic files on CD"
5a-A	Bundle of Linear Property Assessment Notices (Summaries)
5b-A	Bundle of Linear Property Assessment Notices (Detailed)
6-A	Linear Property Assessment Roll
7-A	Linear Property Assessment Roll (Annotated)
8a-A	Brief of the Complainant – Nov 21, 2006
8b-A	Submission of the City of Calgary – Volume 1
8c-A	Submission of the City of Calgary – Volume 2
8d-A	Submission of the City of Calgary – Volume 3
9-A	Rebuttal of the City of Calgary
10-R	Respondent's Submissions – Volume 1
11-R	Respondent's Submissions – Volume 2
12-R	Respondent's Submissions – Volume 3
13-R	Respondent's Submissions – Volume 4
14-R	Brief of Legal Argument and Submission of the Respondent
15-R	Supplementary Brief and Submission of the Respondent
16-R	Willsay Statement of the Respondent
I-1	Submission of MTS Allstream Inc.