

BOARD ORDER: MGB 150/00

IN THE MATTER OF THE "Municipal Government Act" being Chapter M-26.1 of the Statutes of Alberta 1994 (the "Act").

AND IN THE MATTER OF A COMPLAINT to the 2000 linear property assessments

BETWEEN:

Merit Energy Ltd. - Complainant

- a n d -

The Linear Assessor as designated by the Minister of Municipal Affairs - Respondent

BEFORE:

L. Lundgren, Presiding Officer

S. Caithness, Member

P. Tichinoff, Member

Upon notice being given to the affected parties, a preliminary hearing was held in the City of Edmonton, in the Province of Alberta on August 1, 2000.

BACKGROUND

The linear property assessment notice for the 1999 assessment year sent to the Complainant by the Assessment Services Branch of Alberta Municipal Affairs (the "Department") stated that a complaint about an assessment for linear property must be filed with the Administrator of the Board on or before May 31, 2000. By letter dated May 27, 2000, the Complainant filed a complaint with the Board in respect of certain linear property for which it was assessed. On May 29, 2000, the Board issued a Notice of Incomplete Appeal to the Complainant indicating that prior to processing its application for the linear assessment appeal, certain documentation was still required. On July 10, 2000, the Board sent a Preliminary Hearing Notice to the Complainant advising that the complaint application remained incomplete and as such, a preliminary hearing had been set for August 1, 2000. At the hearing, the Department made an application for costs.

ISSUES

1. Is this complaint application validly before the Board?
2. Should the Department be awarded costs to be paid by the Complainant?

LEGISLATION

Section 491(1)(a), (2) and 501 of the Municipal Government Act.
Sections 4 and 6.4 of the Municipal Government Board's Procedure Guide.

Municipal Government Act

491(1) Any matter that is to be dealt with by a hearing before the Board must be in the form of a written statement and must be filed with the administrator within the following periods:

(a) for a complaint about an assessment for linear property, not later than the date shown on the assessment notice;

(2) The statement referred to in subsection (1) must include

- (a) the reason for the matter being referred to the Board,*
- (b) a brief explanation of the issues to be decided by the Board, and*
- (c) an address to which any notice or decision of the Board is to be sent.*

501 The Board may determine the costs of and incidental to any hearing before it and decide by whom and to whom the costs are to be paid.

Municipal Government Board's Procedure Guide:

4. REQUEST FOR COSTS

4.1 Introduction

Pursuant to section 501 of the Act, the issue of costs may be addressed by all parties to the appeal or by the Board.

Parties subject to costs under this section must have the opportunity to provide their positions on the request for costs prior to a decision on the costs.

Request for costs may be considered by the Board where it is of the opinion that as a result of a party abusing the appeal process and through such abuse a party or the Board incurring additional or unnecessary expenses. The Board may consider cost requests for expenses incurred by a party and/or by the Board. Board costs result from a loss of hearing time or the creation of additional hearing time owing to an abuse of process.

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4.2 Request for Party Costs

The Board may award costs to cover all or part of expenses incurred by one party owing to a breach by the other party of any of the rules in this Guide or as established by a panel for a specific hearing.

- a) The Board may award costs against one or more parties and/or their representatives, and instruct by whom and to whom those costs shall be paid.*
- b) As determined by the Board, costs may include:
 - i) travel expenses at reasonable or actual rates;*
 - ii) hearing related out-of-pocket expenses (for example, parking, meals, etc.);*
 - iii) fees and travel expenses of witnesses;*
 - iv) fees for legal counsel; and*
 - v) other related hearing costs that may be incurred.**
- c) The Board may require supporting invoices of costs.*
- d) The Board may deal with the request for costs at the first instance it is raised or it may request that parties exchange information and rebuttals within a specified time period and may set a separate time to deal with the matter of costs.*
- e) The Board may decide to consider the request for costs through oral representation or it may limit the presentations to written submissions.*
- f) The Board will deal with a request for costs in a timely fashion. The target timeline for a decision on costs is sixty (60) days from the date of the hearing, or the date of the request where no hearing is deemed necessary, or a greater time if deemed necessary by the Board in complex matters.*

4.3 Board Costs

The Board may award costs to cover all or part of its costs where it is satisfied that a party has breached the rules or otherwise acted in a manner considered to be detrimental to the other parties or to the operations of the Board.

- a) The Board may order Board costs against any or all parties to the appeal for the following. Where a party:
 - i) has acted contrary to an agreed upon or Board instructed process;*
 - ii) causes unreasonable delays or postponements;*
 - iii) other like behaviour;**

which results in additional costs to the Board for lost hearing time or the creation of additional hearing time.

- b) In its discretion, the Board will determine costs using established government rates.*

6.4 Completion of Linear Assessment Complaint

- a) *The statement of complaint must contain the description of the linear property under complaint.*
- b) *The complaint must contain the name and address of the assessed party and the copy of the assessment notice.*
- c) *The complaint must be signed by the complainant or the complainant's representative.*

SUMMARY OF COMPLAINANT'S POSITION

The Respondent did not appear at the hearing nor did it provide any other material.

SUMMARY OF RESPONDENT'S POSITION

It is submitted that, contrary to the legislation, the Complainant has not provided a complete application form, has not provided a description of the linear property under complaint, and has not provided specific reasons for the complaint. It is not only impossible for the Board, but for the Department as well, to identify the items of linear property being appealed, as no PPI ID numbers have been provided. The vague reasons that have been provided are meaningless and result in the inability of the Department to respond to the complaint. Ultimately, it is the responsibility of the Complainant to make all information available to the Board.

It is submitted that, in this case, the Complainant has provided such inadequate information that not only has it not complied with the Board's complaint procedure, but has also made it impossible for the Department to know the case it needs to meet and to prepare a response. As a result, the Department has incurred unnecessary costs and expenses in preparing for and attending the preliminary hearing. Accordingly, the Department respectfully requests that in order to compensate it for the Complainant's breach of the rules of the Procedure Guide and the rules of natural justice, costs in the amount of \$300 be awarded to the Department in respect of fees for legal counsel for the preparation of the brief and for appearing at this preliminary hearing. The Department is not alleging bad faith or maliciousness and is not requesting costs on a punitive basis, but the Department submitted that the Complainant's actions are not appropriate.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A and upon having read and considered the documents shown on Appendix B attached, the Board finds the facts in the matter to be as follows:

1. The linear complaint application is incomplete as filed.
2. The Complainant made no attempt to complete the application.

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3. There was no abuse of process intended by the Complainant in filing this complaint.

In consideration of the above, and having regard to the provisions of the Municipal Government Act, the Board makes the following decision, for the reasons set out below.

DECISION

1. The linear assessment complaint of Merit Energy Ltd. is invalid.
2. The cost application of the Department is dismissed.

It is so ordered.

REASONS

On May 29, 2000, the Board issued a Notice of Incomplete Appeal to the Complainant indicating that certain documentation was still required to complete the application. No documentation was received by the Board. The Board finds that the linear assessment complaint application of the Complainant is in fact incomplete and as such, is not a valid complaint before the Board. Accordingly, no merit hearing will be scheduled for this complaint.

The cost application by the Department is dismissed. The Board is of the opinion that there was no abuse of process intended by the Complainant in filing this complaint. Failure to complete the complaint application is not of itself an abuse of the process. The net result is that the complaint is found to be invalid. Without any abuse of the appeal process, the Board is unwilling to award costs for preparation for a hearing.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 22nd day of August 2000.

MUNICIPAL GOVERNMENT BOARD

(SGD) L. Lundgren
L. Lundgren, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
Nancy Reid	Solicitor for the Respondent
Kevin Halsted	Assessor for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1.	Submission of the Respondent