

**DECISION WITH REASONS**

IN THE MATTER OF A COMPLAINT filed with the *Composite Assessment Review Board* (“CARB”) pursuant to Part 11 of the *Municipal Government Act*, c. M-26 RSA 2000 (“Act”).

**BETWEEN:**

Town of Cochrane, Applicant

-and-

River Heights Place Ltd., Owner  
Respondent / Complainant  
(Represented by Altus Group Ltd.)

**BEFORE:**

Edmund Bruton, Board Member

This is a complaint to the Town of Cochrane Assessment Review Board (“Board”) in respect of a property assessment prepared by the Assessor of the Town of Cochrane entered in the 2020 Assessment Roll as follows:

Roll Number	Municipal Address	Assessed Value
1479000	4A River Heights Drive	\$13,366,300

This jurisdictional application was heard on July 28, 2020 commencing at 10:00 am. The application was conducted by means of a virtual hearing, with visual and audio components available to the participants and the public.

Appeared on behalf of the Applicant, the Town of Cochrane

- R. Lodermeier                      Assessor, Town of Cochrane

Appeared on behalf of the Respondent / Complainant

- A. Izard                              Agent, Altus Group Ltd.

Also present:                              K. Babin, Town of Cochrane

**Procedural or Jurisdictional Matters:**

[1] This matter was heard and decided by a one member Composite Assessment Review Board ("CARB") pursuant to section 40 of *Matters Relating to Assessment Complaints Regulation, AR201/2017* ("MRAC"). The parties confirmed their understanding of the jurisdictional nature of the application by the Town of Cochrane and raised no objection to Mr. Bruton acting as the presiding officer.

**Issues:**

[2] What was the purpose and effect of Ministerial Order numbers MSD: 022/20 issued on March 25, 2020 and MSD: 014/20 issued on April 17, 2020 (collectively, the "Ministerial Orders")?

[3] Was the Complaint filed by the owner, River Heights Place Ltd., submitted in a timely fashion in accordance with the deadline stipulated by the Town of Cochrane or directed by the Ministerial Orders?

[4] Was the information requested by the assessor under subsection 295(1) of the Act necessary for the Assessor to carry out its duties and responsibilities? Should the Complaint be dismissed pursuant to subsection 295(4) of the Act because the property owner failed to provide information within 60 days in response to the Town of Cochrane's request for information?

## Position of the Parties

### Applicant's Position

[5] The position put forward by the Applicant is straightforward. The mailing date indicated on the 2020 Annual Property Assessment Notice is January 20, 2020. The Notice of Assessment Date on the form is January 28, 2020. The Complaint Deadline indicated on the form is "March 30, 2020." The Owner did not submit a Complaint until June 30, 2020; it missed the Complaint deadline.

[6] The Applicant brought to the Board's attention Ministerial Order numbers MSD: 022/20 and MSD: 014/20 and maintained that they "...did not extend the complaint deadline as the Notice of Assessment was dated January 28, 2020. The Applicant pointed out that Ministerial Order 014/20 stated specifically that:

*"The complaint deadline pursuant to Section 284(4) of the Municipal Government Act, for an assessment notice with a notice of assessment date that falls on or after January 31, 2020 is extended to July 1, 2020 or 60 days from the notice of assessment date, whichever time is later."*

[7] On April 7, 2020 the Applicant's Manager of Assessment and Taxation sought guidance from a provincial colleague, the Director of Assessment and Property Tax Policy with Municipal Affairs, regarding time extensions and Ministerial Order No. MSD:022/20. She enquired:

*"It is my understanding that the above Ministerial Order No. MSD:022/20 is now dated effective **March 31, 2020**, therefore as our final date of complaint was **March 30, 2020** this order of extension to October 1, 2020 no longer applies to our municipality and therefore will not be extending the complaint deadline."*

[8] Her colleague responded the same day in the following manner:

*"The MO filed at QP is the official copy.*

*We're sorry for the confusion. Our Minister was in quarantine and an electronic signature was not acceptable to QP.*

*Based on this MO, your understanding of the situation is the same as mine."*

(MO refers to Ministerial Order; QP stands for Queen's Printer)

[9] The complaint was submitted by the Owner or its agent to the Town of Cochrane on June 30, 2020. The Applicant submitted that the Ministerial Orders did not extend the complaint deadline as the Notice of Assessment date was January 28, 2020.

[10] The Applicant also directed that Board's attention to section 461(1.1) of the Act which provides that:

*"(1.1) A complaint filed after the complaint deadline is invalid."*

[11] The Applicant further maintained that the Owner failed to provide information required by it, and specifically requested in its correspondence dated May 13, 2019 and July 26, 2019. As a result, the Applicant asserted that the property owner has lost its right to *"make a complaint in the year following the assessment year..."* pursuant to subsections 295(1) and 295(4) of the Act.

### **Respondent's Position**

[12] The Respondent sought to explain the purpose of the Ministerial Orders and some of the confusion arising from their issuance. The Covid-19 pandemic and the delays and interruptions it created, compelled the government to relax and extend certain filing deadlines. Ministerial Order 022/20, issued on March 25, 2020 addresses this problem. Filing deadlines were extended, in an omnibus fashion, to October 1, 2020. But because the Minister was in quarantine and Queen's Printer was unwilling to accept an electronic signature, Order 022/20 did not become effective until March 31, 2020.

[13] Several weeks passed and further consideration was given to filing deadlines. This resulted in Ministerial Order 014/20 which changed the complaint deadline from October 1, 2020 to July 1, 2020 or, "...60 days from the assessment date, whichever time is later." Ministerial Order 014/20 took effect on April 17, 2020. Ministerial Order 014/20 also extended the time set out in subsection 295(4) for a person to provide information requested under subsection 295 of the Act in the same fashion. Other timelines specifically identified in the order were extended to May 31, 2020.

[14] The Respondent brought to the Board's attention telephone communication and correspondence between Harish Consul representing the Owner, and Ryan Lodermeier in his capacity as an Assessor with the Town of Cochrane. The Respondent referred to a March 19, 2019 e-mail from Mr. Lodermeier to Mr. Consul where he stated that:

*"I amended the effective month in the estimate. The new assessment and the supplementary assessment is based on the entire building as fully complete and occupied as of October, 2019, these values and the pro-rated value will be changed based on when units are completed throughout the year. The estimated new assessment value is based on \$33/sq ft lease rate for main floor units and \$25/sq ft for second floor units."*

[15] Information continued to be processed to develop a supplemental assessment. In an e-mail to Mr. Consul dated September 26, 2019, Mr. Lodermeier stated:

*“As per our phone call earlier, below is an updated assessment and tax estimates based on the eyecare and dentist units being occupied as of August 2019 and September 2019, respectively.”*

[16] In an e-mail earlier that day, also dated September 26, 2019, Mr. Lodermeier provided an estimate of taxes for the 2019 supplementary tax bill and the annual 2020 tax bill for the subject property. He explained that:

*“The new assessment represents the building as complete effective May 2019 with the eyecare and dentist units complete June 2019 and July 2019 respectively. A \$50/sf reduction for tenant improvements is applied to the assessment for the current vacant space of 8,531 square feet.”*

[17] The Respondent asserted that the parties were in communication with each other and the salient information required by the Assessor was available to it, although it acknowledged that it did not specifically return the 2020 Annual Commercial / Industrial Property Information Form (ARFI) mailed to it by the assessment department. The Respondent urged the Board to keep in mind the July 1, 2019 valuation date and the fact that the units were not occupied and generating income until some time after that date.

[18] As to whether the information requested by the Assessor was necessary for it to carry out its duties and responsibilities under subsection 295(1) of the Act, the Respondent referred the Board to its disclosure materials and the various cases used in support of its position that the penalty provided by section 295(4) is *“disproportionate to the gravity of the fault of the defaulter and to the degree of harm to the opposing party.”*

### **Board’s Finding of Fact and Reasons for Decision**

[19] To be clear, the Board is not critical as to the manner in which this matter was administered by the Town of Cochrane. Timelines were respected and notices were properly given. Advice and direction was sought. But what is perhaps less available to the Applicant from an administrative perspective, is the discretion afforded the Board under section 10 of the *Interpretation Act, RSA 2000, c. I-8*. It provides that:

*“An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction that best ensures the attainment of its objects.”*

[20] It is in this light and context that the Board considers the objectives and effect of the Ministerial Orders.

[21] The Ministerial Orders were intended to provide an omnibus form of relief against timelines and deadlines that could not otherwise be met in the midst of a pandemic. Matters had to be dealt with quickly. The first Ministerial Order, MSD:022/20 was issued on March 25, 2020. It is the Board's understanding, based on the evidence presented at the hearing, that it would normally have come into effect that day, with the result that relief would have been provided in respect of complainant deadlines falling on or after January 25, 2020. But this did not happen. The Minister of Municipal Affairs was quarantined and the Queen's Printer would not accept an electronic copy of his signature. MSD:022/20 was held up for five days and the order did not come into effect until January 31, 2020.

[22] The Board has no hesitation in finding that the January 25, 2020 Ministerial Order was intended to be of immediate effect and prospective in nature. But for the reasons explained above, the order was revised to coincide with the date that it was signed by the Minister and published by the Queen's Printer. And while the Applicant is quite correct in interpreting and applying the order literally, using the January 31, 2020 reference as its benchmark, the Board is satisfied that it is entirely appropriate to give the enactment the "*fair, large and liberal construction that best ensures the attainment of its objects*". Applying a liberal rather than literal construction, the Board finds that the purpose and objective of MSD:022/20 is achieved by applying it to assessment notices falling on or after January 25, 2020.

[23] In view of this finding, the Board accepts that the Complaint filed by the Owner on June 30, 2020 was submitted in a timely fashion in accordance with the ministerial directive.

[24] As to the third issue, the Board is not satisfied that the information requested from the Owner was in fact necessary for the Assessor to carry out its duties and responsibilities under section 295(1) of the Act. There was an on-going exchange of information and correspondence between the parties. The Assessor's March 19, 2020 correspondence indicates that it had determined the new and supplementary assessment based on rates of \$33 / sq ft and \$25 / sq ft for the main floor and second floor offices. Those rates were determined based on typical values for similar or comparable space well before the July 1, 2019 valuation date and prior to the office space being completed or occupied.

[25] In *Boardwalk REIT LLP v. Edmonton (City) 2008 ABCA 220*, the Court discussed the meaning of the word necessary in section 295 at paragraph 121 and cited the Shorter Oxford Dictionary which states that:

*"In English the word 'necessary' means indispensable; not merely expedient or useful nor convenient."*

[26] In this instance, the information sought from the Owner leading up to the July 1, 2019 valuation date was clearly not indispensable, as the valuation determination was made by the Assessor based on other available information, including some information provided by the Owner, well in advance of that date.

[27] Finally, the Board is very much aware of the significance of this application and the effect that MGA subsection 295(4) has in precluding the taxpayer from contesting the amount of property tax it must pay. As was noted in paragraph 104 of the *Boardwalk* decision:

*“Allowing irrevocable unilateral assessments with no recourse to any tribunals is the largest possible penalty in a taxation statute.”*

[28] This concern and consequence was also considered by the Board.

**Board Decision:**

[29] The Board accepts that the Complaint filed by the Owner was in accordance with the expanded filing timelines established under the Ministerial Orders.

[30] The Board is not persuaded that the 2019 ARFI information sought from the Respondent was necessary for the Applicant to carry out its responsibilities.

[31] The Respondent’s Complaint against the assessment of the subject property is valid. A merit hearing will be scheduled in accordance with the disclosure of evidence rules set in in the *Matters Relating to Assessment Complaints Regulation, AR201/2017*.

Dated at the Town of Cochrane in the Province of Alberta, this 11th day of August, 2020.



For: \_\_\_\_\_  
Edmund Bruton, Presiding Officer

**APPENDIX A**

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

<b>NO.</b>	<b>ITEM</b>
1.	<i>A1 - Applicant's Evidence (18 pages)</i>
2.	<i>R1 – Respondent's Evidence (348 pages)</i>

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
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|----|---|
| 1. | Applicant: Ryan Lodermeier – Assessor, Town of Cochrane |
| 2. | Respondent: Andrew IZARD – Agent, Altus Group Ltd.      |

**Application for Judicial Review**

*An application for Judicial Review may be made to the Court of Queen's Bench with respect to a decision of an assessment review board.*

*An application for Judicial Review must be filed with the Court of Queen's Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to*

- (a) the assessment review board*
- (b) the Complainant, other than an applicant for the judicial review*
- (c) an assessed person who is directly affected by the decision, other than the Complainant,*
- (d) the municipality, and*
- (e) the Minister.*