

June 22, 2010

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City of Red Deer Assessment  
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## NOTICE OF DECISION

The Municipal Government Act provides the right for you to appeal this decision to the Court of Queens Bench on a question of law or jurisdiction of the Board within 30 days of receiving this letter.

### BACKGROUND:

The complaint was filed on March 15, 2010 by AEC International (on behalf of Sears Canada Inc.) for a review of the assessed value of Roll #431670 (4900 Molly Bannister Drive – commonly known as the 'Bower Mall') in Red Deer, AB.

On March 29, 2010 the Respondent filed an application for a preliminary hearing on the grounds that the complaint does not comply with the requirements of section 460(3) & (7) of the Municipal Government Act (MGA).

After hearing the arguments of the Complainant and the Respondent and considering all materials filed the Board identified the issues as follows:

1. Is the Complainant an 'assessed person' or 'taxpayer' as required by s. 460(3) of the MGA?

The Respondent argued that the Complainant does not meet the definition of '*assessed person*' or '*taxpayer*' as defined in the MGA. The Complainant argued that tenants are taxpayers and should be given the right of appeal.

Section 284(1) of the MGA defines an '*assessed person*' as one '*who is named on an assessment roll in accordance with s. 304*'.

Section 304(1) (b) (column 2) of the Municipal Government Act defines '*assessed person*' as '*the owner of the parcel of land*'.

Section 1(1) (bb) of the Municipal Government Act defines 'taxpayer' as a 'person liable to pay tax'.

The Board was presented with a certificate of title demonstrating that BCIMC Realty Corporation is the registered owner of the land. The Board was not presented with any evidence to indicate that the Complainant is legally liable for the payment of taxes on the subject property. In fact, it was acknowledged during the hearing that the Complainant is not liable for the payment of taxes. Therefore the case of *Westbrook Mall (ARB J0005/2010-P)* is of no assistance to the Complainant.

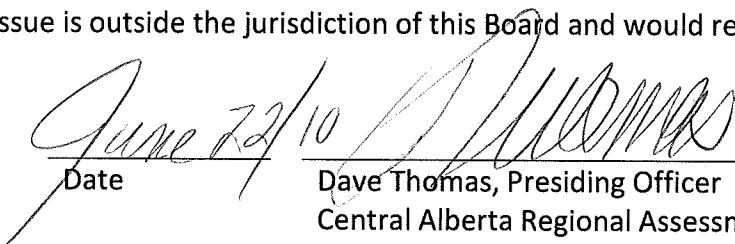
In the *Calgary v. Alberta (Municipal Government Board)* the Court of Appeal took an expansive view of the definition of an 'assessed person' reasoning that owning property elsewhere in the municipality qualifies one for standing to file a complaint. The Board heard evidence that the Complainant (as represented by AEC) does not in fact, own property in Red Deer.

Therefore, the Board finds that the Complainant is neither an 'assessed person' nor 'taxpayer' as defined in the Municipal Government Act s. 460(3) and is not qualified to file this complaint. The complaint is dismissed.

Other issues raised were that the Complainant had not complied with s. 460(7) of the MGA and that the Respondent failed to meet its duty to disclose under s. 299 & 300 of the MGA.

Having decided that the complaint is invalid under s. 460(3) of the MGA, the Board finds no need to address the remaining issues.

The Complainant also argued that equity should grant some relief to those tenants who do not qualify as an 'assessed person' or 'taxpayer' as set out in the case law noted above. A discussion of this issue is outside the jurisdiction of this Board and would require a legislative change.

  
Date \_\_\_\_\_ Dave Thomas, Presiding Officer  
Central Alberta Regional Assessment Review Board