



Municipal District of Bighorn No. 8

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DECISION OF THE ASSESSMENT REVIEW BOARD

Hearing: **29 September 2009**

Roll Number **382 2541330**

Legal Description **Lot 44 Condominium Plan 0812595 and 140 undivided One Ten-Thousandth shares in the common property**

(A. Johnston/M. Andreassen, co-owners; Mr. Johnston appeared as the Complainant)

I. Decision

In accordance with Section 467 of the Municipal Government Act, Chapter M-26, RSA 2000 as amended, the Board has determined that no change is required to Assessment Roll #382 2541330, for Lot 44 Condominium Plan 0812595 and 140 undivided One Ten-Thousandth shares in the common property (the “condo unit”).

II. Background

The Assessment Review Board (the “Board”) received a complaint from Andrew Paul Johnston (the “Complainant”), representing his wife and himself as the fractional interest owners of the condo unit legally described above; a hearing was held on Tuesday, September 29th. The Complainant was present at the Hearing, as was the Assessor for the Municipal District (Frank Watson, Bow Valley Property Valuers), and the Municipal District’s Director of Finance (Katherine Van Keimpema).

A number of documents were submitted and provided to the Board, as follows:

- 23 July and 13 Sept 09 letters from the Complainant;
- 22 July and 27 August 09 letters from the Director of Finance to the Complainant;
- Copy of 2009 Combined Assessment & Tax Notice for Roll # 382 2541330;
- Copy of Certificate of Title showing registered owners of the condo unit;
- Assessor’s report (untitled and not dated);
- Case study: Calgary (City) vs. Lougheed & Co [Calgary docket 0001-17888; 30 Apr 01];
- Case study: The Owners Condominium Plan No. 8810455 vs. Spectral Capital Corporation et al [Calgary docket 8901-17175, 20 Nov 1990];
- 10 Sept 09 Letter from Brownlee LLP, re Property Taxes [addressed to M.D. of Bighorn];
- Case study: Good Samaritan Society vs Hinton (Town) [Municipal Government Board, Order 017/05, 7 Feb 05];
- Case study: BTC Properties II Ltd. vs. Calgary (City) [Municipal Government Board Order 116/03, 13 Aug 03];
- Excerpt from “Sullivan and Driedger on the Construction of Statutes”, fourth edition [opening page of Chapter 1 and page 402];
- Definition of “fee simple” from Black’s Law Dictionary, Seventh Edition, 1999.

Issues

1. Jurisdiction: The Complainant submitted that the Board had the authority to hear his complaint, under Section 460(5)(b) of the Municipal Government Act: the Complainant indicated his complaint was in regards to the name and address of the assessed person on the Combined Assessment & Tax Notice for Roll #382 2541330. He also referred to the case studies he had provided (Good Samaritan Society vs.

Hinton, and BTC Properties II Ltd. vs. Calgary), to provide assurance to the Board that it had jurisdiction to hear his complaint. The Complainant submitted that the grounds of his complaint were limited to the issue of the name and address on the aforementioned Combined Assessment & Tax Notice.

The Board consented to hear the Complaint.

2. Incorrect Name and Address: The Complainant submitted that he and his wife, as co-owners, should not be responsible for the assessment/taxes for the condo unit, as no title exists for that property. He noted that the co-owners have a separate title for a fractional interest in the condo unit: the Certificate of Title provided shows the Complainant and his wife as "...joint tenants as to an undivided ¼ interest...are the owners of an estate in fee simple of and in Condominium Plan 0812595 Unit 44 and 140 undivided one ten-thousandth shares in the common property excepting thereout all mines and minerals." He further submitted that, pursuant to Section 304(1) of the Municipal Government Act, the Complainant and his wife are not the correct assessed persons, because the requirement of Column 2 in Section 304(1) was not complied with.

The Complainant also referenced Sections 305 and 460 of the Municipal Government Act, the Land Title Act, the Law of Property Act and the Condominium Property Act, and submitted the case studies Good Samaritan Society vs Hinton, and BTC Properties II Ltd. vs. Calgary, the excerpt from Sullivan and Driedger, and the definition of "fee simple" from Black's Law Dictionary, as evidence in support of his position.

The Assessor submitted that, based upon his review of the Municipal Government Act (specifically Sections 290.1 and 304) and the Condominium Property Act (specifically Section s.1(y), definition of a "unit"), the entire condo unit needs to be assessed as a whole, and fractional ownership does not change this. The Municipal Government Act indicates the land to be assessed is a "parcel of land" and that condominium units are to be assessed by unit; he further indicated that a unit means an entire unit, not a fractional interest in the unit. He asserted that the correct property had been assessed, and that the co-owners listed on the Combined Assessment & Tax Notice for Roll #382 2541330 were the correctly-assessed persons for the property.

The Assessor had submitted the case studies Calgary (City) vs. Lougheed & Co, and The Owners Condominium Plan No. 8810455 vs. Spectral Capital Corporation et al, as supporting his position. The M.D. had submitted the 10 Sept 09 Brownlee LLP letter to the Hearing: Brownlee had concluded that "...the Assessor is only required to assess each separate unit and the common property associated with that unit, not each separate interest within that unit."

The Board noted that the separate Certificates of Title for the condo unit were the same, except for the names of the different ¼ fractional interest owners. The Board also noted the concept that property assessments and thus property taxes are charges on property (land and improvements) rather than on people/interests (whole or fractional). Finally, the Board noted that there are no limitations on how many "fractional ownerships" can be created out of one title: the Assessor noted that, in a nearby jurisdiction that his firm assesses, there are situations where a single property has 52 fractional owners.

3. Liability : The question of liability for payment of taxes arose, during discussions: the responsibility for payment of taxes, given the issue of the incorrect name and address on the Combined Assessment & Tax notice. The Director of Finance noted that she was uncertain if liability was an issue, or whether liability was simply a result of the outcome of the decision on the Complaint. The Complainant indicated that liability was not an issue, as the Board was not deciding who was liable for tax payment, but rather whether the name and address were correct on the Combined Assessment & Tax Notice.

The Assessor submitted that, pursuant to Section 460 and 467 of the Municipal Government Act, the Board does not have the authority to decide liability for taxes.

The Board did not consider this issue, when reaching its decision.

4. Time Limit for Appeal: The Complainant's 23 July 09 letter indicated that "The preliminary issue is whether the time limit for appeal has passed."

As the Hearing opportunity had been provided to the Complainant, it is noted that the time limit for appeal was not an issue before the Board.

5. Assessment: The Complainant's 23 July 09 letter indicated that "We object to the assessment of \$470,000 as it is not possible that our ¼ undivided interest could be worth more than ¼ of \$470,000 or \$117,500."

As the Complainant indicated, during the Hearing, that the sole grounds of the complaint was whether the Combined Assessment & Tax Notice for the condo unit had the correct name and address on it, the Board did not address the assessment issue.

Reasons

Pursuant to Section 469(2) of the Municipal Government Act, the Complainant requested that reasons be given, when the Board reached its decision. Those reasons are:

- (1) The Board accepts that the requirements of the Municipal Government Act have been complied with, by the municipality, in issuing the 2009 Combined Assessment & Tax Notice for Roll # 382 2541330 (legal description Lot 44 Condominium Plan 0812595 and 140 undivided One Ten-Thousandth shares in the common property). Specifically, it is noted that the requirements of Section 290.1(1) and 293(1) of the Municipal Government Act, referencing assessment preparation, have been met.
- (2) The Board does not believe that the Complainant has provided sufficient statutory evidence to support his position, noting that the Complainant has instead suggested that the Board would have to interpret and decide how the legislation would deal with situations.

Board members present: M. Milne, Chairman
D. Cooper, member
M. Dunki, member
P. Ryan, member

29 September 09
DATE

CHAIRMAN,
ASSESSMENT REVIEW BOARD