

IN THE MATTER OF A COMPLAINT filed with the City of Calgary Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

The City of Calgary – Applicant

- a n d -

Mylonas Enterprises Ltd. - Respondent Represented by Res – Comm Property Consultants

BEFORE:

Members:

Paul G. Petry, Presiding Officer

A preliminary hearing was convened on May 12, 2010 in the City of Calgary in the Province of Alberta to consider applications brought by the City of Calgary (Applicant) concerning the assessment complaints filed by Res-Comm Property Consultants (Respondent) with respect to the following roll numbers:

Roll Number - 201113149

Roll Number - 201113156

BACKGROUND

Assessment complaints for the 2010 tax year were filed with the City of Calgary Assessment Review Board (ARB) on March 5, 2010 for the above noted properties. The ARB scheduled a preliminary jurisdictional hearing at 1:30 PM May 12, 2010 to consider the City of Calgary's application to dismiss the subject complaints.

The primary issue is an alleged non compliance with respect to Section 5 of the complaint form (schedule 1 of MRAC). The Applicant argues that as the complaints are not in compliance with MRAC section 2(1) the complaints are in valid and the ARB must dismiss the complaints. The Respondent to the City of Calgary's application, Res – Comm Property Consultants, did not appear for attendance at the hearing of this matter. As section 463 of the Municipal Government Act (Act) requires that the ARB proceed with the hearing so long as the parties have been notified. Therefore the ARB proceeded with the hearing on May 12, 2010.

ISSUE

Has the complainant failed to comply with MRAC section 2(1) and if so are the complaints invalid?

POSITION OF THE PARTIES

Applicant's Position

The Applicant argues that MRAC section 2 requires that a complainant must complete and file their complaint with the clerk in the form set out in schedule 1 of MRAC and failure to comply with this requirement results in the complaint being invalid and the ARB whether it be a LARB or a CARB must dismiss the complaint. It was argued that "must" is to be construed as imperative and this is consistent with authorities on administrative law and interpretations by the courts. The Applicant argues that compliance with the formalities and conditions set out in schedule 1 are essential to the acquisition of the right being conferred, in this case the right to complain about one's assessment. The more specific breach alleged by the Applicant relates to serious deficiencies with respect to the information provided in section 5 of schedule 1 wherein the complainant failed to provide reasons in the form of issues, grounds for the requested assessment. The Applicant argues that this information is mandatory and that this degree of detail is required for the Applicant to prepare for the merit hearing and to allow it to determine whether meaningful dialogue can occur toward finding a resolution of the issues. Section 5 of the complaint form asks for reasons for the complaint including:

- What information shown on the assessment or tax notice is incorrect
- In what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the ARB, and the grounds in support of these issues
- What the correct information is
- If the complaint relates to an assessment, the requested assessed value

A bolded note in this section of the form reads: "**An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form**". This warning is in reference to section 9(1) of MRAC.

The Applicant relying on Black's Law Dictionary argued that an "issue" is a point in dispute between two or more parties and a "ground" is to provide a basis for something. In this case the complainant has not set out specific or correct issues and grounds for the complaint issues are incomplete. A requested assessed value is provided however, the reasons for the complaint are deficient and imply that the agent does not know the subject property. The complainant's reasons suggest that rental rates are too high but there are no buildings on the property. For these reasons the Applicant argues that the complaint does not comply with the requirement of section 2 and schedule 1 of MRAC. Given that the complainant has not complied in completing schedule 1 the Applicant argues that the CARB has no choice but to declare the complaints to be invalid under section 2(2) and to dismiss the complaints.

Respondent's Position

The complainant did not attend the hearing and did not file a written presentation as provided by MRAC section 16. The only documentation therefore was the evidence in form of the complaint form itself. Section 5 of the complaint form states *"assessment does not reflect market value, rental rates & income approach and sales comparables show an over-assessment – the building is very old and in below average condition. It has access and parking issues. Given the market has softened the assessment still went up"*. This wording under section 5 is almost identical for both complaints and it would appear that the two properties are adjacent to one another.

Decision

Legislative Requirements

The CARB has provided a fairly detailed review of its interpretation and findings concerning the application of the Act and MRAC regarding compliance intended under MRAC 2(1) and (2) in its decision number ARB J0001/2010 of May 27, 2010 *City of Calgary v Linnell Taylor Assessment Strategies*. The CARB recognizes the CARB decisions are not binding on other panels however in the subject case the issues are similar and therefore those reasons are applicable but will not be repeated in their entirety here. The following excerpt is adopted here:

"The terms used to describe the information required by section 460(7) of the Act and those used to describe what information is being sought in section 5 of MRAC schedule 1 are not absolute or exacting. There are no definitions of the words matters, explain, reasons, issues or grounds. It appears to the CARB that MRAC section 9(1) is helpful and provides some clarity to what is meant by the phrase used in section 460(7)(b) of the Act "explain in what respect that information is incorrect". MRAC 9(2) states that "a CARB must not hear any matter in support of an issue that is not identified on the complaint form". The CARB therefore concludes that the form of explanation that is required by 460(7)(b) are **the issues** which should speak to why the complainant believes the assessment or any of the other matters on the assessment or tax notice may be incorrect. Under 460(7)(b) "a complainant must" provide an explanation of what information is incorrect (**the issues**) and under 467(2) "an ARB must dismiss a complaint that was not made within the proper time or does not comply with section 460(7), therefore if an explanation or at least one issue is not provided on the compliant form the complaint should be dismissed by the CARB"

These findings are determined by the CARB to be applicable to the subject complaint.

Standard of Compliance

In determining the standard of compliance which should be applied to complaints under section 460(5) of the Act with particular reference to 460(7) of the Act and Schedule 1 of MRAC the CARB adopted the standard set out in a decision by the Alberta Court of Appeal Boardwalk v City of Edmonton. Again the CARB adopts the following excerpt from its earlier decision referred to above:

“The CARB finds that reasonableness and substantial compliance tests similar to the Boardwalk decision are appropriate in the context of assessment complaints made under the provisions of the MGA and MRAC.

Therefore respecting the application before the CARB we find that the taxpayer is required to provide information respecting **what is complained about and why that complaint is being raised**. If that information is generally contained within the complaint form, then it can be said that substantial compliance has been met. Where these particulars are not found to be present within the complaint form then the complaint should be found to be invalid and should be dismissed in accordance with MRAC section 2(2).”

In the subject cases the reasons or issues in complaint meet the substantial compliance and reasonableness tests. A reader would generally understand from what the complainant has said that market value is of primary concern as the assessment in the view of the complaint did not track with the change in the market. Income is over stated within the income approach and sales comparisons show the property to be over assessed. The complainant includes negative property attributes which one would conclude detract from the value that would otherwise be its market value. The Applicant argued that the Respondent appears not to know the property and introduced an aerial photograph to show that there are no buildings on site. From this photograph, however there appears to be some form of small structures in place and the CARB is of the opinion that the facts relating to this and other matters in dispute should be considered in the merit hearing. Based on the standards of compliance reviewed above, the CARB finds that both of the subject complaints satisfy the requirements of MRAC 2(1).

Decision

In view of all of the foregoing the CARB has decided that the subject complaints are valid and are in compliance with the Act and MRAC 2(1). Therefore the CARB directs that the subject complaints proceed to hearing as scheduled.

It is so ordered.

Dated at the Calgary ARB Offices, City of Calgary in the Province of Alberta, this 28 day of May, 2010



Presiding Officer, Paul G. Petry

Sent to:

**Res Comm Property
3 Meadowlark LN
Calgary, AB T3Z 2C8**

**Mylonas Enterprises Ltd.
301, 1026 - 16 AV NW
Calgary, AB T2M 0K6**

**Assessment Tribunal Unit #8002
The City of Calgary
P.O. Box 2100, Station M
Calgary, Alberta T2P 2M5**

**Minister of Municipal Affairs
Hon. Hector Goudreau
c/o MGB Office
15th Floor, Commerce Plaza
10155 - 102 ST
Edmonton, AB T5J 4L4**

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
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- ## 1. Exhibit 1A - City of Calgary Submission

APPENDIX 'B'

ORAL REPRESENTATIONS

[illegible]

1. Mr. S. Powell – City of Calgary
2. Ms. K. Hess – City of Calgary