

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

**between:**

***Mr. Darrell MacRae, COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***Paul G. Petry, PRESIDING OFFICER***

These are complaints to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

<b>ROLL NUMBER</b>	<b>Hearing Number</b>	<b>Address</b>
<b>072023005</b>	<b>57124</b>	<b>3820 – 17 Avenue S.E.</b>
<b>200669646</b>	<b>57125</b>	<b>3606 Bonnybrook Road S.E.</b>
<b>113011993</b>	<b>57122</b>	<b>101 – 14 Avenue S.E.</b>

A jurisdictional matter concerning these complaints was heard on 19<sup>th</sup> day of November, 2010 at the office of the Assessment Review Board located at floor number 4, 1212 – 31 Avenue NE, Calgary, Alberta, boardroom 3.

Appearing on behalf of the Complainant:

- Mr. D. MacRae

Appearing on behalf of the Respondent:

- Mr. D. Grandbois

**Background:**

The three properties referred to above were scheduled for merit hearings on November 24, 2010; however the Complainant requested a preliminary hearing to deal with a request to postpone the hearings and adjust the disclosure timelines. The hearings of these complaints had originally been scheduled for mid July, 2010, however due to an injury suffered by the Complainant prior to the hearing dates the ARB rescheduled the hearings to November 24, 2010. The preliminary hearing on November 19, 2010 was held to consider a further request for postponement because of a second injury due to an automobile accident which occurred September 30, 2010. The CARB provided the parties with its abbreviated oral decision on November 19, 2010 and therefore this is the Composite Assessment Review Board's follow-up written decision with reasons. **This decision does, however modify the date for the Respondent's disclosure to Monday December 6, 2010, as the previous date of December 4, 2010 which was part of the oral decision, is a Saturday when the City Offices are closed.**

**Issues:**

1. Does the CARB have jurisdiction to postpone these hearings?
2. If the CARB has jurisdiction to use discretion, do the circumstances in this case warrant the exercise of that discretion? If the CARB is without jurisdiction what remedy if any is available to the parties?

**Board's Findings in Respect of Each Matter or Issue:**

1. The CARB is without jurisdiction to grant a postponement of the hearings while providing the regulated time requirements for disclosure.
2. The parties if inclined to do so may agree and consent to abridge the required disclosure times as set out in Section 8 (2)(a),(b) or (c) of Matters Relating to Assessment Complaints Regulation (MRAC).

## Overview of the Positions of the Parties

### Complainant

The Complainant explained that he had been in an automobile accident on September 30, 2010 and was badly injured. In addition to the direct result of being incapacitated by the injury he has also been on an anti-depressant drug which has affected his ability to respond to the requirements of preparing his evidence and to comply with the disclosures dates. It was suggested that the drugs have had an effect on his mental state, however the Complainant also admitted to forgetting the required disclosure date. The Complainant requested understanding of his position and that more time be granted for submitting his evidence and further that the hearings of his complaints be postponed.

### Respondent

The Respondent indicated that the hearings had been rescheduled once and yet there is an acknowledgement that life is not predictable. The Respondent had also sent a letter on October 19, 2010 to the Assessment Review Board (ARB) with a copy to the Complainant stating that the Complainant's disclosure had not been provided on time and that the City of Calgary would therefore seek to have the assessments confirmed. The Respondent indicated that while it has a measure of acceptance of the Complainant's issue it would leave the matter in the hands of the CARB.

### Findings and Reasons:

Section 8 of MRAC sets out timelines for disclosure of the evidence and requires that the Complainant's evidence be disclosed 42 days in advance of the hearing date. Section 468 of the Municipal Government Act (Act) requires that decision on Complaints must be rendered within 30 days of the hearing and before the end of the taxation year which in this case is before December 31, 2010. The CARB must have time to hear the matter, deliberate, make its decision and then put its decision in writing before December 31, 2010. This means that the hearing of matters must occur early enough to allow time for the decision of the Board to be reached and written before year end. Even if the Complainant were prepared to disclose its evidence the day following this hearing the 42 day disclosure requirement would require the hearing date, taking into account holidays, to be no earlier than January 5, 2011. The CARB therefore has no jurisdiction to grant any postponement of the hearings in this case which are scheduled for Nov. 24, 2010.

The CARB advised the parties that it had concluded that it was without jurisdiction to grant a postponement in this case and also that the parties if they were so inclined may abridge the disclosure requirements as set out in section 8 of MRAC which may then allow the CARB to consider rescheduling the hearing to a date not later than December 10, 2010. The parties indicated a willingness to discuss this possibility off record to determine if a solution could be found. The following represents the agreement and consent reached by the parties and the CARB to abridge the disclosure dates and reschedule the hearing date.

- The Complainant must provide its disclosure to the Respondent and to the ARB no later than 4:30 pm November 26, 2010.
- The Respondent must provide its disclosure to the Complainant and to the ARB no later than 4:30 pm December 4, 2010. **Amended to 12:00 pm (noon), December 6, 2010.**
- The opportunity for rebuttal is waived and not available to the Complainant.

- The hearing of the three subject complaints will be held beginning at 9:00 am at the ARB Offices in Calgary on December 10<sup>th</sup>, 2010.

The above accommodation is based only on the willingness of the parties to address this exceptional circumstance.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 22<sup>nd</sup> DAY OF NOVEMBER 2010.



**P. Petry**  
**Presiding Officer**

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*