

**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, Revised Statutes of Alberta 2000 (the Act).

between:

1204612 Alberta Limited, COMPLAINANT
(Represented by Colliers International realty Advisors Inc.)

and

The City Of Calgary, RESPONDENT

before:

Board Chair P. COLGATE
Board Member P. PASK
Board Member D. STEELE

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 090086604

LOCATION ADDRESS: 404 MANITOU ROAD SE

FILE NUMBER: 65921

ASSESSMENT: \$1,400,000

This complaint was heard on 25 day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- Troy Howell, Colliers International Realty Advisors Inc. – Representing 1204612 Alberta Limited

Appeared on behalf of the Respondent:

- Magan Lau – Representing the City of Calgary
- Jason Tran – Representing the City of Calgary

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] A preliminary matter was brought before the Board with respect to the late filing of the Complainant's evidence.

Issues:

[3] Did the Complainant file the evidence disclosure within the time prescribed by the legislation?

[4] If the Complainant did not file the evidence disclosure pursuant to the legislation, does the *Matters Relating to Assessment Complaints Regulation* (MRAC) provide for the abridgment of time?

[5] If the Complainant did not file the evidence disclosure pursuant to the legislation and the legislation does not provide the Composite Assessment Review Board (CARB) with authority to abridge, can the Board hear the evidence?

Legislation

[6] The *Matters Relating to Assessment Complaints Regulation* reads:

Matters Relating to Assessment Complaints Regulation, Alta Reg. 310/2009

s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) The complainant must, at least 42 days before the hearing date,

(i) Disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed

witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond or to rebut the evidence at the hearing

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

s 10(1) A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).

s 10(2) Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b), or (c).

s 10(3) A time specified in section 8(2)(a), (b), or (c) for disclosing evidence or other documents may be abridged with written consent of the persons entitled to the evidence or other documents.

[7] The *Interpretation Act* reads:

Interpretation Act, RSA 2000, c I-8

s 22(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.

[8] The *Municipal Government Act* reads:

Municipal Government Act, RSA 2000, c M-26

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

Position Of The Complainant

[9] The Complainant acknowledged that its disclosure package was filed on May 9, 2012, thus failing to meet the legislative requirements. The failure to meet the time period by one day means the Board would be required to abridge the time between the filing and hearing date by one day in order to hear the evidence provided in the disclosure package.

Position Of The Respondent

[10] The Respondent submitted that the Complainant failed to file its evidence package at least 42 days before the July 24, 2012 hearing date. Accordingly, The Respondent filed no evidence with respect to the hearing.

[11] Section 8(2) MRAC states that the Complainant must disclose evidence, which it intends to rely, at least 42 days before the hearing date. The 42 days are determined in accordance with section 22(3) of the *Interpretation Act*, which provides that "at least 42 days" means that the day of the disclosure's delivery and the day of the hearing are not included in reaching the 42 day total. In this instance, the Respondent argued that pursuant to the Interpretation Act, the disclosure deadline fell on June 11, 2012.

[12] The Complainant's disclosure materials were submitted to the CARB on June 12, 2012, making the disclosure one day late. As a result the Board is subject to section 9(2) MRAC, which states that the Board must not hear any evidence not disclosed in accordance with section 8 MRAC.

[13] The Respondent did not consent to the abridging of the time line as set out in the Act and the Regulations.

Decision for Preliminary Matter

[14] The Board found that the Complainant did not comply with the legislation in filing its evidentiary materials and as a result, the Board will not hear the Complainant's evidence.

Reasons for The Decision

[15] The Board noted that the filing deadline for disclosure is based on section 22(3) of the *Interpretation Act* applied to the wording of section 8(2) MRAC. The use of the phrase, "at least 42 days" is defined to mean clear of the filing date and the hearing date. The Board considers the wording clear and unequivocal and finds that no issue arises with regard to the filing deadline falling on June 11, 2012.

[16] The Board noted that the wording in section 10 MRAC distinguishes between expanded and abridged time. The CARB considers it clear that what is requested by the Complainant is an abridgment or shortening of the time from 42 to 41 days from the hearing date. This time period was established by the Notice of Hearing and a late filing therefore requires a shortening, not an expansion of time for filing. The provisions in section 8 and 10 are clear insofar as the time period of 42 days cannot be abridged without written consent from the party to whom disclosure is to be made. As a result, there is no legislative authority to allow the Board to make an abridgment of time; that lies solely with the Respondent.

[17] Moreover, the disclosure process has been developed in the legislation to ensure that each party has a clear understanding of the case they will face. The MRAC provisions indicate a high standard deemed necessary to ensure that there is no encroachment upon the time period unless the receiving party consents to an abridgment. The wording is not vague as to the

consequences should either party fail to comply with the legislation, that being that the evidence must not be heard by the Board.

[18] Following a discussion with both parties, the CARB considered the recent Alberta Court of Queen's Bench decision: ***The City of Edmonton v. The City of Edmonton Assessment Review Board and Stephen Richard Wood*** [2012 ABQB 399]. In paragraph 82 of the decision, Hillier J. stated that "the language chosen to invoke this time limit simply cannot support the exercise of an unexpressed discretion having full regard to the purpose of the legislation".

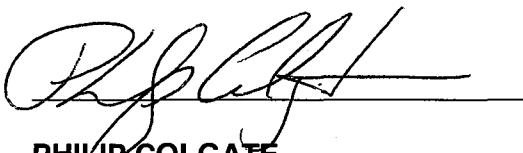
[19] The intention of the parties is not relevant. The fairness of the process lies in the preservation of the time period regardless of the reason for late filing. Moreover, no evidence has been brought forward in this matter to explain the late filing other than the Complainant, having been made aware of disclosure deadline by the Notice of Hearing, neglected to submit the documents on time.

[20] There is no provision in the Act or in the Regulation that the Complainant can rely on to support its request for fairness or natural justice despite the Complainant's intention to file disclosure on time. The Complainant made no request for the Respondent to consent to the late filing.

Merit Hearing Decision

[21] Due to the CARB's decision in the preliminary matter to exclude the Complainant's evidence, The Board dismissed the hearing before the Composite assessment Review Board for lack of compliance with the Act and the Regulations.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF AUGUST 2012.



PHILIP COLGATE
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
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No evidence was accepted by the Board due to the late filing by the Complainant and the lack of a submission by the Respondent.

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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Jurisdictional/Procedural	Information Exchange	Late Filing	