



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF PRELIMINARY DECISION

NO. 0098 288/10

Canadian Valuation Group
1200 10665 Jasper Avenue
Edmonton, AB T5J 3S9

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton, AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on October 8, 2010 respecting a complaint for:

Roll Number 9978833	Municipal Address 101 10009 102 Avenue NW	Legal Description Plan: 0021116 Unit: 1
Assessed Value \$2,117,500	Assessment Type Annual - Revised	Assessment Notice for 2010

Before:

Darryl Trueman, Presiding Officer

Board Officer: Annet N. Adetunji

Persons Appearing: Complainant

Allison Cossey, Assessment and Taxation Branch
Aleisha Bartier, Law Branch

Persons Appearing: Respondent

Tom Janzen, CVG

PROCEDURAL MATTERS

On questioning, the parties advised that they were satisfied with the procedures that led to this preliminary hearing and this included their satisfaction with the composition of the Board which was to hear this preliminary matter.

BACKGROUND

First, it must be noted that the property owner who filed the original Complaint form will, for the purpose of this preliminary hearing, be referred to as the Respondent. The reason for this is because his Complaint form does not contain required information and thus the Assessor who would respond to the Complaint at a merit hearing, now becomes the Complainant, questioning the validity of the Complaint, to the Board, at this preliminary hearing.

On January 4, 2010 an Annual Realty Assessment Notice, for the subject property, was sent to the owner. In this notice, the assessment for 2010 was \$1,244,500. On July 12, 2010 an Amended Annual Realty assessment notice was sent. This notice amended the assessed value to \$2,117,500. On July 15, 2010, an Assessment Review Board Complaint form was filed by the owner. On August 25, 2010 and August 26, 2010, telephone calls were made to the owner advising him of a deficiency in his Complaint form.

ISSUE

Does the absence of a “requested assessed value” on the Assessment Review Board Complaint form invalidate the Complaint?

LEGISLATION

The Municipal Government Act, R.S.A. 2000, c. M-26;

S.460(7) A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.

S.467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

The Matters Relating to Assessment Complaints Regulation (“MRAC”), Alberta Regulation 310/2009;

S.2(1) If a complaint is to be heard by an assessment review board, the complainant must

- (a) complete and file with the clerk a complaint in the form set out in Schedule 1, and
- (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.

S.2(2) If a complainant does not comply with subsection (1),

- (a) the complaint is invalid, and
- (b) the assessment review board must dismiss the complaint.

POSITION OF THE RESPONDENT

Canadian Valuation Group (CVG), who are professional tax agents, appeared on behalf of the original Complainant (Respondent in this case) and testified that the property owner who filed the Complaint on July 15, was unskilled in the matter of appealing property tax assessments. They reasoned that it should not be necessary for a Complainant to read and understand, in its entirety, the *Municipal Government Act* and its Regulations in order to file a valid Complaint. CVG went on to say that it was apparent that the property owner was satisfied with his original assessment and that it was not until the Notice of the Amended Assessment that he felt a Complaint should be filed. This was apparent for two reasons: number one, the Complaint form was filed a mere three days after the date of mailing of the Amended Notice and, number two, the Complaint form contains a brief narrative from the Complainant that “the amended assessment for 2010 is up more than 100% in two years, with the same tenancy”. The Board was advised that since the Amended Notice advises an assessment that is roughly double the original assessment for 2010 then it could reasonably be assumed that \$1,244,500 was the “requested assessed amount”.

POSITION OF THE COMPLAINANT

The Complainant, in this preliminary hearing, presented their exhibit C1 which was effectively a documented chronology of events leading up to this hearing. It was emphasized that telephone attempts to contact the Respondent were made on two occasions, in order to have the Complaint deficiency corrected. They testified that although a receptionist advised that the messages had been delivered, the Respondent had not returned the calls. The Complainant went on to present their exhibits C2, C3, C4 and C5 which were excerpts from the *Municipal Government Act* (MGA) and its regulation entitled *Matters Relating to Assessment Complaints* (MRAC), a document entitled Construction of Statutes by Ruth Sullivan and recent Composite Assessment Review Board decisions dealing with improperly prepared Complaint forms. The City Assessor contended that MGA s.460(7) and MRAC s.2(1) employed the use of the word “must” in describing the obligations of a Complainant when filing an assessment Complaint. The Assessor then pointed to the direction of the author Sullivan when she wrote that “when shall and must are used in legislation to create a prohibition they leave the persons to which they apply no choice”. The Board was advised that the City would not, in any case, assume a “requested assessed amount” from a Complainant, particularly when the information, in its simplest form, was a required item which must be filled in on the Complaint form.

DECISION

The Complaint is allowed and the Board determines that the Complaint form, dated July 15, is invalid.

REASONS FOR THE DECISION

The Board takes particular note of the *Municipal Government Act* (MGA) s.460 (1) “a person wishing to make a complaint about any assessment or tax must do so in accordance with this section”; S.460 (7) “A complainant must” (d) “identify the requested assessed value, if the complaint relates to an assessment”. Given that fairness is a cornerstone in any taxation scheme, applicable legislation which provides an assessed person with a right to question an assessment should also provide balance to a taxing authority. Support for this balance is found in the generally regarded concept that a party has the right to know the case that is being made against it. It is reasonable to think that the "Complaint Form" is the genesis of the case against the taxing authority. It is also reasonable to conclude that the strict elements of conformity to the complaint form, provided for by the legislation, are designed to strike this balance.

The Board recognizes that special or exceptional circumstances can be a valid reason to apply interpretation to the Act and its Regulations. In this case there was no evidence supplied by the Respondent that there was misunderstanding or that the applicable statutes were somehow misinterpreted thereby creating “special or exceptional circumstances”. The Board reviewed various recent Composite Assessment Review Board (CARB) decisions relating to incorrectly or insufficiently detailed 2010 Assessment Complaint Forms. Unless there was proof of extenuating circumstances relating to either the Complainant’s understanding of what was required of him or the Assessor’s understanding of what was being said on the Complaint form, then a strict interpretation of the legislation has been applied in all cases.

The Board accepted the testimony of the Complainant, in this case, that the original Complainant could have preserved his right to complain by simply responding to either of the two telephone notices that were provided to him.

In this case the Board is unable to understand how the original Complainant could have misunderstood or misinterpreted his requirements with respect to completing the Complaint form with a “requested assessed amount”. Accordingly the Board is left with no alternative but to determine that the Complaint form is invalid.

Dated this 15th day of October, 2010, at the City of Edmonton, in the Province of Alberta.

Presiding Officer

This Decision may be appealed to the Court of Queen’s Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.

cc: Municipal Government Board
807958 Alberta Ltd