



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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EDMONTON AB T5J 2R7
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NOTICE OF DECISION NO. 0098 369/10

Lawrence Giacobbo
Giacobbo Holdings Ltd.
12521 142 Avenue NW
Edmonton, AB T5X 5Y8

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 November 4, 2010, respecting a complaint for:

Roll Number 4075552	Municipal Address 12521 142 Avenue NW	Legal Description Plan: 8921617 Block: 63 Lot: 5
Assessed Value \$7,941,500	Assessment Type Annual - New	Assessment Notice for 2010

Before:

Darryl Trueman, Presiding Officer
Francis Ng, Board Member
Brian Frost, Board Member

Board Officer:

J. Halicki

Persons Appearing: Complainant

Lawrence Giacobbo, owner
Anna D'Agostini, business consultant

Persons Appearing: Respondent

Guo He, assessor
Tanya Smith, solicitor

PRELIMINARY MATTERS

The City of Edmonton applied to have the Complainant's case dismissed and the assessment confirmed because the Complainant had failed to provide required disclosure under Division 2, Section 8 of *Matters Relating to Assessment Complaints Regulation AR310/2009* (MRAC).

BACKGROUND

The Complainant (Giacobbo Holdings Ltd.) filed his complaint form on February 25, 2010, and thereafter did not provide copies of his evidence material to the City as required. The City assessor reminded him of his disclosure requirement and on September 8, 2010 a hearing was

postponed in order for the Complainant to react to new disclosure dates and a new hearing date of November 4, 2010. These requirements were set out in a written decision.

ISSUE

Did the Complainant (Giacobbo Holdings Ltd.) provide disclosure evidence as required?

LEGISLATION

Matters Relating to Assessment Complaints Regulation AR 310/2009

8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(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 to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;
- (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant 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 respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent’s evidence;
- (c) the complainant must, at least 7 days before the hearing date, 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 rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

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

The Municipal Government Act, R.S.A. 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.

COMPLAINANT'S POSITION

The Complainant (Giacobbo Holdings Ltd) advised the Board that he had conversations with various assessors suggesting that he meet with them to discuss his case. He said that he had attempted to arrange this meeting on several occasions. It was his understanding that such a meeting would satisfy his requirements for disclosure.

RESPONDENT'S POSITION

The Applicant advised the Board that the Complainant's (Giacobbo Holdings Ltd) obligations were clear under MRAC and that furthermore, he had been reminded on at least two occasions to provide the material required of him to the City. The City provided exhibit R1 which was an original Assessment Review Board notice dated June 21, 2010 advising of required disclosure due dates. The City also provided their exhibit R2 which supported internal correspondence and with the Complainant (Giacobbo Holdings Ltd).

DECISION

The application is granted and the assessment is confirmed at \$7,941,500.

REASONS FOR THE DECISION

Upon review of *Matters Relating To Assessment Complaint Regulation* (MRAC), section 8(2)(a)(i) *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence: the complainant must, at least 42 days before the hearing date, 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 to or rebut the evidence at the hearing,....*, the Board accepted the Applicant's position that the Complainant (Giacobbo Holdings Ltd.) had not responded to his above requirement. Therefore, without evidence which could be heard in accordance with section 9 of MRAC the Board was left with no alternative but to grant the application as set out in the preliminary request.

Dated this eighth day of November, 2010 A.D., 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
City of Edmonton, Assessment and Taxation Branch