

NOTICE OF DECISION NO. 0098 51/12

GGL HOLDINGS LTD
ATTN: GUNTER LANG
49 MARLBORO RD NW
EDMONTON, AB T6J 2C7

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 June 15, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
2193357	14605 119 AVENUE NW	Plan: 5951KS Block: 2 Lot: 5	\$860,500	Annual New	2012

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, RSA 2000, c M-26.

cc: BOREAL MACHINE LTD.
Bourgeois & Company Ltd.

Edmonton Composite Assessment Review Board

Citation: GGL HOLDINGS LTD v The City of Edmonton, 2012 ECARB 220

Assessment Roll Number: 2193357

Municipal Address: 14605 119 AVENUE NW

Assessment Year: 2012

Assessment Type: Annual New

Between:

GGL HOLDINGS LTD

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Applicant

POSTPONEMENT DECISION OF Robert Mowbrey, Presiding Officer

Preliminary and Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties indicated they had no objection to the composition of the Board.

[2] In addition, the Presiding Officer stated that he had no bias with this file.

[3] The Applicant advised the Presiding Officer that the Complainant would not be in attendance.

Issues

[4] The issues are as follows:

- i. Should a postponement of the 2012 Annual New Realty Assessment hearing scheduled for June 15, 2012 be granted as requested by the Complainant/Respondent?
- ii. Does the Assessment Review Board administration have the authority to cancel a hearing?
- iii. Does the Assessment Review Board administration have an obligation to ensure equal and fair treatment of parties when scheduling or cancelling a hearing?

Legislation

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

Matters Relating to Assessment Complaints Regulation, AR 310/2009

15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.

(3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

Position Of The Complainant

[6] The Complainant was not present at the hearing. The Complainant had stated that he was not opposed to the postponement, and provided availability dates to the Respondent should the request be granted.

Position Of The Applicant

Issue I: Should a postponement of the 2012 Annual New Realty Assessment hearing scheduled for August 7, 2012, be granted as requested by the Complainant/Respondent?

[7] The Applicant informed the Board that the original merit hearing had been cancelled by the Assessment Review Board (ARB) administration and rescheduled to a date on which the Respondent would not be available.

[8] The Applicant advised the Board that he had indicated his availability dates to the ARB administration upon being notified of the cancellation, but the ARB had scheduled the hearing without taking the Applicant's dates into consideration.

[9] The Applicant therefore requests a postponement of the hearing to September 14, 2012, and advised the Board that the Complainant had indicated they would be available on the new date.

Issue II: Does the Assessment Review Board Administration have the authority to cancel a hearing?

[10] The Applicant questioned the authority of the ARB administration to cancel a hearing and reviewed the chain of events surrounding the cancellation.

[11] The Applicant stated that on May 11, 2012, the City was informed that the ARB administration had cancelled a hearing scheduled for May 24, 2012, as a result of an error on the part of the ARB administration.

[12] The ARB administration erred by sending the Notices of Hearing to the wrong mailing address for the Complainant and the wrong email address for the Complainant's representative. As a result, the Complainant was never notified of the hearing.

[13] The Applicant, within two hours of the cancellation of the hearing, sent an email to the ARB administration indicating dates on which he would be available for a hearing.

[14] On May 22, 2012, the ARB administration sent out a new notice indicating the hearing had been rescheduled for August 7, 2012, a date on which the Applicant had indicated he was not available in his email.

[15] In response to the Applicant's questions as to why the hearing was scheduled for a day the assessor was not available and whether this was another mistake, the ARB administration informed the Applicant that the ARB administration relies on black-out dates that must be entered into the City's computer system by the Applicant. The Applicant's availability dates were not entered into the City's computer system and the ARB administration rescheduled the hearing prior to receiving the Applicant's email.

[16] The ARB administration advised the Applicant to request a postponement of the hearing.

[17] The Applicant notes that although section 7(d) of the *Matters Relating to Assessment Complaints Regulation* (MRAC) confers discretion on ARB administration to notify "any assessed person other than the complainant who is affected by the complaint..." Failure to give notice to the Complainant's representative cannot be grounds to cancel the hearing, as at the time the notice was sent to the Complainant's representative, the representative was not duly authorized to act in that capacity since an Agent Authorization form had not been signed by the Complainant pursuant to section 51 of MRAC.

[18] The Applicant contends that while the ARB administration's failure to notify the Complainant of the hearing constitutes an exceptional ground warranting a postponement, this determination can only be made by a Board pursuant to section 15 of MRAC, as there is no provision under the legislation for the cancellation of a hearing by ARB administration.

[19] The Applicant argues that section 462(1)(b) of the *Municipal Government Act* (MGA), read in conjunction with section 463 and section 7(d) of MRAC clearly indicates that it is the Board's responsibility to determine at the start of a hearing, whether all parties required to be notified received notice, and to decide whether or not to proceed with the hearing. The ARB administration is not so empowered.

[20] The Applicant points out that section 7(d) of MRAC and section 460(3) of the MGA both provide that only an assessed person or taxpayer can make a complaint; however, there is no process in place to ensure that ARB administration does not schedule hearings for a Complainant who is neither an assessed person nor a taxpayer.

Issue III: Does the Assessment Review Board Administration have an obligation to ensure equal and fair treatment of parties when scheduling or cancelling a hearing?

[21] The Applicant reviewed the process for requesting a postponement for the Board.

[22] The process is initiated by filling out a Request for Postponement form, on which the party requesting postponement indicates dates they will not be available, and sending the completed form to the ARB administration.

[23] The ARB administration then sends the form to the party not requesting a postponement to indicate whether they consent or not and also to provide dates they will not be available.

[24] The Applicant informed the Board that the reason behind such a process is to ensure that both sides are treated equally and with fairness.

[25] The Applicant informed the Board that the law branch for the City never received a Notice of Hearing, which is sent to the assessment department in the form of a “to-do” list using the City’s computer system accessible by the assessor.

[26] The City’s lawyers also do not have similar access to enter black-out dates in the computer system as do the assessors.

[27] The lawyers are therefore unable to indicate their availability for hearings.

[28] As a result of these limitations, the lawyer for the Applicant informed the Board that he requested on the Request for Postponement form, in the space provided to indicate unavailability dates, to be contacted for dates he would be available for a hearing when the ARB administration was ready to reschedule the cancelled hearing, but was never contacted.

[29] The lawyer informed the Board that the Complainant’s portion of the postponement request form was left blank and was not sent back to him.

[30] The ARB administration, by scheduling the new hearing on a date the ARB knew the assessor was not available and requiring the Applicant to apply for a postponement when the original error did not require a postponement, ignored the principles of fairness and applied a double standard similar in nature to that found as unacceptable in the case of *Edmonton (City) v. Assessment Review Board of the City of Edmonton* 2010 ABQB 634.

[31] In conclusion, the Applicant requests that the Board give direction for precedential purposes on whether the ARB administration has the ability to cancel a hearing, and if so, whether administration, when cancelling a hearing, has an obligation to consult both parties with regards to availability in a manner similar to the requirements for a postponement.

Decision

[32] The Board grants the postponement request and the hearing is rescheduled to:

Date: September 14, 2012

Time: 9:00 AM

Location: Edmonton Assessment Review Board Offices

Disclosure of Complainant's Evidence: August 2, 2012

Disclosure of Respondent's Evidence: August 30, 2012

Disclosure of Complainant's Rebuttal Evidence: September 6, 2012

[33] No new notice of the postponed hearing will be sent.

Reasons For The Decision

[34] The Board finds that the inability of a party to attend a hearing without a compelling reason is not in itself a sufficient reason to grant a postponement, as section 16(1) of MRAC provides that personal attendance is not required.

[35] However, the Board in the present case considers the ARB administration's failure to notify the Complainant of the original scheduled hearing and the consequent rescheduling of the hearing to a date when the Applicant was not available, created an exceptional circumstance warranting a postponement of the hearing.

[36] With regards to the cancellation of the hearing, the Board reviewed the MRAC and MGA and found that while there was no express authority for the ARB administration to cancel a hearing, due to an administrative error, there never was a valid meeting scheduled.

[37] The Board accepts the Applicant's argument that at the time of the cancellation, the Complainant's representative was not duly authorized to act in that capacity since an Agent Authorization form had not been signed by the Complainant.

[38] The Board notes that had this been the only instance of a failure to give notice, the ARB administration would clearly lack the ability to cancel the hearing, since the representative would not be entitled to notice. However, the ARB administration also failed to give notice to the Complainant.

[39] The Board accepts the Applicant's submission on the operation of section 462(1)(b) of the MGA, read in conjunction with section 463 and section 7(d) of MRAC, that only a Board after determining whether all parties received notice or not, can decide whether to proceed with the hearing.

[40] However, the Board finds that these provisions provide guidance only in relation to postponements and adjournments, which the Board is empowered to deal with pursuant to section 15 of MRAC.

[41] The Board considers that the ARB administration is entrusted with the responsibility to schedule a hearing and notify parties accordingly pursuant to section 461(2) of the MGA and section 7(c)(d) of MRAC.

[42] The Board finds that the ability of a Board to hear a matter begins after a hearing has been properly constituted; however, a hearing cannot be considered to be properly constituted if it has not been validly scheduled by notifying parties to the hearing.

[43] The Board therefore finds that since the hearing was not properly constituted, the postponement or adjournment provisions do not apply and a cancellation appears to be the only

reasonable option to remedy the ARB administration error, in light of the silence of legislation on the matter.

[44] With regard to the third issue raised by the Respondent, the Board considers that fairness and equal treatment of the parties is a requirement of fundamental justice, which the ARB administration is required to apply. As such, it seems appropriate that upon cancelling a hearing, the ARB administration is obligated to consult both parties regarding availability in a manner similar to the requirements for a postponement.

Heard commencing June 15, 2012.

Dated this 10th day of July, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Cameron Ashmore, Law Branch, City of Edmonton

Marty Carpentier, Assessment Dept. City of Edmonton