



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION NO. 0098 583/10

Property Tax Appeal Services (PTAS)
10328 97 Avenue
Edmonton AB T5K 0B5

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 November 23, 2010 respecting a complaint for:

Roll Number 3061157	Municipal Address 12804 114 Avenue NW	Legal Description Plan: 8522173 Block: 6 Lot: 7
Assessed Value \$12,418,000	Assessment Type Annual - New	Assessment Notice for: 2010

Before:

Dean Sanduga, Presiding Officer
Ronald Funnell, Board Member
Judy Shewchuk, Board Member

Board Officer:

Segun Kaffo

Persons Appearing: Complainant

Michelle Warwa-Handel, PTAS
Christopher Bataluk, Iginla & Company

Persons Appearing: Respondent

Guo He, Assessor
Michael Johnson, Assessor
Tanya Smith, Law Branch
Steve Lutes, Law Branch

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to the file.

PRELIMINARY MATTERS

Upon commencement of the hearing, the Respondent raised a preliminary issue on the failure of the Complainant to file any evidence in accordance with the disclosure guidelines under the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009. The Respondent requested the Board to dismiss the complaint, or alternatively confirm the assessment.

BACKGROUND

The property owner filed a complaint with the ARB on March 3rd, 2010 and appointed an agent to represent the owner. A Notice of Hearing was subsequently sent to both the owner and the agent on June 21, confirming September 9, 2010 as the hearing date and setting out the following applicable disclosure dates (R-1, page17):

Complainant's disclosure due date: July 28, 2010

Respondent's disclosure due date: August 25, 2010

Complainant's rebuttal due date: September, 1 2010

The Respondent filed a basic disclosure package on August 25, 2010 and provided a copy to the ARB and the subject property's owner/agent, notwithstanding that the Complainant's disclosure due on July 28 was not received. The property owner subsequently retained PTAS as agents, and on September 1, 2010 the new agent requested a postponement of the merit hearing. The Board granted the request and postponed the hearing to October 28 with the condition that there will be no change to disclosure deadlines.

A further postponement was requested by the Respondent and granted on October 28 to enable the assessor to return from medical leave, as well as to enable the Complainant review the MGB decision on their 2009 appeal. This second postponement was granted also with no change to disclosure timelines.

ISSUES

- Should the complaint be dismissed as a result of non disclosure of evidence by the Complainant?
- Is the assessment of the subject property in excess of its market value?

LEGISLATION

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.*

Matters Relating to Assessment Complaints Regulation, AR 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 to or 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 (3) a time specified in section 8(2) (a), (b) or (c) for disclosing
Evidence or other documents may be abridged with the written
Consent of the persons entitled to the evidence or other documents.*

POSITION OF THE COMPLAINANT

The Complainant submitted that prior to being retained; the owner of the property had been under some confusion as a result of the 2009 appeal being referred back to the Assessment Review Board by the Municipal Government Board for rehearing, as well as the multiplicity of notices from the ARB. As a result, no disclosure was filed as the owner was under the impression that the 2010 complaint would only proceed after the 2009 appeal had been resolved.

On September 8, 2010 the Complainant indicated in a letter to the ARB their intention to rely on the same evidence submitted for the 2009 complaint. The Complainant also indicated that it would be beneficial to all parties if the 2009 appeal was resolved prior to hearing the 2010 complaint.

The Complainant requested the Board to postpone the merit hearing and abridge the disclosure timelines, to enable the Complainant to file their 2010 evidence.

POSITION OF THE RESPONDENT

The Respondent pointed out that the Complainant failed to file any evidence prior to the disclosure deadline under section 8 of MRAC. The Respondent submitted that under section 9 of MRAC the Board is precluded from hearing any evidence not disclosed in accordance with the disclosure rules. Accordingly, the Respondent requested the Board to dismiss the complaint, or alternatively confirm the assessment.

The Respondent submitted that under the relevant regulations, the 2009 appeal is independent of the 2010 complaint. Consequently, timely disclosure of evidence by the Complainant cannot be dependent on the outcome of the 2009 appeal.

DECISION

The decision of the Board is to dismiss the 2010 complaint.

REASONS FOR THE DECISION

The Board considered the Complainant's request for abridgement of the disclosure timelines and postponement of the merit hearing under section 10 of *MRAC*. The Board is of the opinion that as provided under section 10, this remedy is only available with the written consent of both parties. The Respondent in this case has opposed the request.

The Board is of the opinion that section 8 of *MRAC* explicitly lays out the rules for disclosure of evidence. The Board is satisfied that the Complainant did not file any evidence in accordance with those guidelines. The Board is of the view that it is the responsibility of the Complainant to ensure timely disclosure of evidence, and that the Complainant had ample opportunity to file their evidence in accordance with the disclosure guidelines. Accordingly, under section 9 of *MRAC*, the Board is precluded from hearing any evidence that has not been disclosed in compliance with the regulation.

The Board is of the view that the Complainant ought to have filed their evidence notwithstanding that the outcome of the 2009 appeal was being awaited. In this regard, the Board accepts the Respondent's argument that the 2009 appeal is independent of the 2010 complaint.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 25th day of November, 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
1106088 Alberta Ltd.