



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
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NOTICE OF DECISION NO. 0098 586/10

82 Avenue Developments Inc
2 Laurier Place NW
Edmonton, AB T5R 5P4

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 3 and concluded on November 12, 2010 respecting a complaint for:

Roll Number 8054157	Municipal Address 9923- 82 Avenue NW	Legal Description Plan I Block 58 Lot 10
Assessed Value \$ 515,000	Assessment Type Annual New	Assessment Notice for: 2010

Before:

Ted Sadlowski Presiding Officer
Petra Hagemann Board Member
Howard Worrell Board Member

Board Officer:

Vince Paniak

Persons Appearing: Complainant

Aaron Slawsky
Liam Kelly, Barrister & Solicitor

Persons Appearing: Respondent

Guo He, Assessor

Tanya Smith, Law Branch

PRELIMINARY MATTERS

Both the Complainant and the Respondent agreed to carry forward all evidence and argument from roll # 8054314.

The Respondent submitted to the Board (R-1, pg 3, Failure to disclose) that since no disclosure was provided by the Complainant prior to the deadline of Sept 20, 2010, that the burden of proof which rests with the Complainant had not been met and therefore requests that the Board dismiss or confirm the 2010 assessment.

DECISION ON PRELIMINARY MATTER

The decision of the Board on the preliminary matter is that the merit hearing would proceed, however the Complainant will be prohibited from submitting any evidence as no disclosure had been made. The Board also ruled that the Complainant can only speak to the evidence provided by the City. The merit hearing was then postponed to November 12, 2010 due to the lateness of the day

MERIT HEARING.

BACKGROUND

The subject property is part of a larger parcel assessed under two roll numbers. The property under this appeal includes a building located at 9923-82 Avenue. Both the Complainant and Respondent agreed to carry forward evidence and argument from this appeal to the adjoining roll # 8054314.

On the resumption of the hearing on Nov 12, 2010, the Complainant attended with legal counsel.

ISSUES

Is the assessment too high based on an enviro issue raised on the Complaint form?

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 and regulations 310/2009

Disclosure of evidence:

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 to rebut the evidence at the hearing

Failure to disclose:

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

POSITION OF THE COMPLAINANT

The Complainant informed the Board that he had been in active discussions with an assessor of the subject property prior and subsequent to filing the complaint form. He indicated that he had explained to the assessor that the subject property is still contaminated and that the 2009 ARB decision to reduce the assessment should be taken into account and an adjustment should be made on the 2010 assessment accordingly. The Complainant indicated that the assessor was aware of the contamination on the site and confirmed to him that he had the engineering report on file. The Complainant was confident that a favourable resolution would result and therefore submitted no disclosure documents as he believed this case would never come before the Composite Assessment Review Board.

POSITION OF THE RESPONDENT

The Respondent submitted that the Complainant failed to meet the disclosure deadline of Sept 20, (R-1, pg 6) and thereby did not prove the incorrectness of the assessment. The Respondent provided no evidence and requests the 2010 assessment be confirmed.

DECISION

The decision of the Board is to dismiss the complaint and confirm the 2010 assessment at \$515,000.

REASONS FOR THE DECISION

1. The Complainant failed to disclose his evidence package by Sept 20, 2010 as outlined by the Assessment Review Board.
2. The Complainant provided a verbal statement that he had been having discussions with the City of Edmonton and had hoped that the matter could be resolved without having to proceed to a hearing. Such resolution did not occur. The Board is sympathetic that such an agreement did not occur.

3. The Complainant, with no objection from the Respondent, submitted an ARB decision dated Oct 7, 2009 based on the 2009 assessment of the subject property. This decision made reference to contamination of the subject property and reduced the assessment on the subject.
4. The Board found that the 2009 ARB decision does not constitute evidence for the 2010 assessment and hence placed little weight on that decision.
5. The Board was persuaded that the burden of proof was not met by the Complainant by not submitting a disclosure within the prescribed timelines.

DISSENTING DECISION AND REASONS

None

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: Aaron Slawsky
City of Edmonton