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City of Leduc

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**LEDUC  
COMPOSITE ASSESSMENT REVIEW BOARD  
JURISDICTIONAL DISPUTE**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1.

**between:**

***City of Leduc, APPLICANT***

**and**

***Lifestyle Options (Leduc) Ltd, RESPONDENT***

**before:**

***R. Mowbrey, PRESIDING OFFICER***

This is a complaint to the Composite Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Leduc and entered in the 2010 Assessment Roll as follows:

**ROLL NUMBER:** 014115  
**LOCATION ADDRESS:** 108 West Haven Drive, Leduc  
**HEARING NUMBER:** 09-2010  
**ASSESSMENT:**

This complaint was heard on the 12th day of October, 2010 at the office of the Composite Assessment Review Board located at 1 Alexander Park, Leduc Alberta, in Council Chambers.

Appeared on behalf of the Complainant:

- W. Powers      Assessor, City of Leduc

Appeared on behalf of the Respondent:

- S. Wolanski      Senior Manager, Respondent.

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board advised the parties that the Board was not aware of circumstances that would raise an apprehension of bias.

The Applicant (City of Leduc) raised a preliminary issue regarding the agent authorization form. The Applicant stated that the agent authorization form did not meet the time line requirements and therefore the Respondent should not be allowed to sit on behalf of the Respondent. The Respondent advised the Board that he was a senior manager of the company and had been directed to attend and there was a form that was signed advising the Board of his appointment.

The Board recessed, deliberated and rendered a decision to the parties. The decision was to allow the Respondent to continue with the hearing. The reasons are the person attending is not an agent per se, but a senior manager with the company. A dismissal for no authorization form signed in the time frame would be the triumph of form over substance. In addition, the dismissal of a complaint due to authorization form not signed in the proper time frame is a disproportionate penalty to the alleged default in failing to file the form on time.

The Applicant advised the Board that the Respondent did not comply with s.295 (1) and s.295 (4) of the MGA. The letter quotes section 295(1) and outlines the consequence of non-compliance by quoting section 295(4).

Section 295(1) of the Act requires:

*"A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed."*

Section 295(4) of the Act states that:

*"No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request."*

In addition, the Applicant advised the Board that Matters Relating to Assessment Complaints Regulation Section 9(3) states:

*"A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor."*



The Applicant advised the Board that the City of Leduc sent out a request for assessment information on September 8th, 2009 and requiring the information by November 15th, 2009. The information requested was never received.

The Respondent (Lifestyle Options (Leduc) Ltd. advised the Board that the Respondent did not receive the request for information. The Applicant stated that a copy of the land title and request for information went to the address on the title. The Applicant stated that a letter put in the mail is deemed to have been received. The Respondent (Lifestyle Options (Leduc) Ltd., stated the owner did not get the request for information and therefore could not respond to the request.

**Board's Decision:**

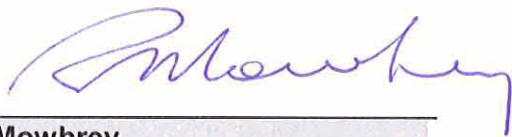
The decision of the Board is to dismiss the application of the Applicant (City of Leduc) and allow case number CARB-09/2010-P to proceed to a merit hearing.

There was no allegation that the Respondent had a history of failing to respond to requests of this sort. The Board was persuaded by the precedent setting "Boardwalk" decision and its implications. The decision notes that the assessor owes the taxpayer a duty of fairness, which means that the assessor should take appropriate steps to ensure the request for information is received and that the penalty for failure to comply is understood. The assessor made no extra effort to ensure receipt of the request for information.

Under "Boardwalk", the court found that the penalty of losing the right to appeal was "draconian" and should not be taken lightly.

The Board found that under these circumstances, it is not appropriate to apply section: 295(4) of the *Municipal Government Act*.

**DATED AT THE CITY OF LEDUC THIS 18<sup>th</sup> DAY OF OCTOBER 2010.**



**R. Mowbrey**  
**Presiding Officer**

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;
- (b) an assessed person, other than the complainant, who is affected by the decision;
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;
- (d) the assessor for a municipality referred to in clause (c).

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and
- (b) any other persons as the judge directs.