

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/14/2010

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the *Municipal Government Act (Act)*, Chapter M-26.1, Section 460(4).

BETWEEN:

Home Depot Holdings Inc. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

R. Irwin, Presiding Officer

D. Howard, Member

D. Rasmussen, Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered in the 2010 Assessment Roll as follows:

Roll Number

Address

0094110

101 Southbank Boulevard

This complaint was set to be heard on the 15th day of October, 2010 at the Town of Okotoks Council Chambers at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- AEC International (Agent for the Complainant) – A. Kiegler and B. Soulier

Appearing on behalf of the Respondent:

- P. Huskinson

Issue:

Cost Application

The Board requested that both parties outline the timelines regarding exchange of correspondence that occurred and/or should have occurred since the inception of this complaint. Both parties were directed to submit written submissions on or before November 1, 2010.

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Positions of Each Party:

The Complainant's submission states that the Respondent did not comply with the Municipal Government Act pertaining to timeline of disclosure of pertinent facts.

The Respondent's argument and documents illustrated that a series of communications had occurred successfully, that the Respondent was never advised of a size restriction of the Complainant's technological system and that they had in good faith attempted to, and eventually disclosed all information. It was also noted that the Respondent had incurred costs in preparation, scheduling and communications.

Board Findings:

The complaint was filed May 14, 2010. There had been communication via each party's emails numerous times before the September 30, 2010 date which was the final date of disclosure for the Respondent.

On Friday October 8, 2010 the Respondent was made aware of the technological restraints of the Complainant's email system and advised that the Complainant had not received the final email of the Respondent's disclosure in accordance with the specified timelines. The Complainant stated that now they did receive a final email disclosure from the Respondent that they had been emailed at 7:56 a.m. on Tuesday October 12, 2010 (the first business day, as Monday was Thanksgiving).

At the hearing the Complainant brought forward a preliminary issue requesting that the hearing be rescheduled for a later date, as they had not received the Respondent's disclosure until October 12, 2010.

Decision:

The Board referred to the Municipal Government Act Section 464(1) "Assessment review Boards are not bound by the rules of evidence or any other law applicable to court proceedings..."

The Board is not in the habit of rescheduling hearings arbitrarily. Consideration and weight is given to whether the situation involves an "Exceptional Circumstance", whether there are issues of "Procedural Fairness" or "Natural Justice" or whether there is an abuse of the complaint system.

The tribunal was concerned with:

- "Why was the taxpayer was not getting their complaint heard?"
- Was there a serious issue of compliance with the intentions of the regulations of the Municipal Government Act?
- Did both parties comply with the Municipal Government Act?"

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In considering all aspects of this issue the Board was also concerned with
"the transaction of the disclosure."

Questions were posed regarding:

1. Receiving acknowledgement that copies were received.
2. Is electronic disclosure sufficient or must a hard copy be signed for?
3. Would an improvement to the timelines include a "48-hour notice before final submissions due" notice be implemented?
4. Is this situation considered in the legislation currently and if not, should it be considered for future amendments?

In this case the Board believes that the Respondent's act of disclosure had been completed but Complainant reception of the disclosure had apparently not been completed.

It is possible that this could indicate that Section 8 of MRAC was not complied with.

After consideration of all pertinent details of this issue the Board decides that no costs shall be awarded in this case.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 21st day of December, 2010.



R. Irwin
Presiding Officer

(for)