

Edmonton Composite Assessment Review Board

Citation: Eco-Industrial Business Park Inc. v The City of Edmonton, 2012 ECARB 823

Assessment Roll Numbers: 1340637, 10150276, 10150280,
10150275 and 1150986
Municipal Address: Multiple
Assessment Year: 2012
Assessment Type: Annual New

Between:

Eco-Industrial Business Park Inc.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

POSTPONEMENT DECISION OF Peter Irwin, Presiding Officer

Issue

[1] Should a postponement of the 2012 Annual New Realty Assessment hearing scheduled for December 10th, 2012 be granted, as requested by the Complainant?

Legislation

[2] The *Municipal Government Act, R.S.A. 2000, c. M-26* states:

468(1) Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,

(a) within 30 days from the last day of the hearing, or

(b) before the end of the taxation year to which the complaint that is the subject of the hearing applies,

Whichever is earlier.

[3] The *Matters Relating to Assessment Complaints Regulation, AR 310/2009* reads:

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

[4] The Complainant has retained Alexandra C. Bochinski of Davis LLP (the “Complainant’s Lawyer”) to represent Eco-Industrial Park Inc. in the hearing of this complaint.

[5] An immediate member of the family of the Complainant’s Lawyer suffered a serious medical emergency less than a week prior to the scheduled hearing. The Complainant’s Lawyer has urgent family duties to attend to related to this emergency, as outlined in Schedule “B” of the Request for Postponement.

[6] These family duties will require the actions of the Complainant’s Lawyer for an unknown number of days in the immediate future and hence the request for a postponement to 2013.

[7] A further extenuating circumstance is that a witness for the Complainant had purchased a ticket for overseas travel to visit family, with a departure date of December 14th and a return in early January, 2013. He had anticipated that the hearing would have been concluded by his planned departure date.

Position of the Respondent

[8] The Respondent agrees that the circumstances surrounding this request warrant a postponement to the New Year.

Decision

[9] The Board grants the postponement request for the five abovementioned hearings.

[10] The hearings are rescheduled to:

Date: March 18th, 2013

Time: 9:00 am

Location: Edmonton Assessment Review Board Offices

[11] No new notice of the postponed hearings will be sent.

[12] The Board directs that no further evidence be submitted in regard to this matter.

Reasons for the Decision

[13] Due to the unavailability of the Complainant’s legal counsel for unforeseen family medical emergency contingencies, the Board finds that an exceptional circumstance exists in this case and deems it reasonable to grant the request for postponement to 2013.

[14] The Board accepts that the facts in the case may be sufficiently complex as not to enable any other lawyer in Davis LLP to become sufficiently familiar in time to stand in the place of the Complainant’s Lawyer on the scheduled hearing date.

[15] The Board notes that the confluence of events (medical emergency, subsequent witness unavailability, and Christmas holiday season) precludes the hearing proceeding until 2013.

[16] The Board has considered the effect of s. 468 of the *MGA* upon this postponement request and finds that in this particular instance, a strict interpretation of the legislation would not fulfill the purpose of the statute. The legislative deadline is intended to ensure the timely adjudication of claims. There is no penalty in the legislation, thus supporting the view that the timeline is directory. Certainly, in rare and wholly unforeseeable circumstances such as these, such a deadline is not intended to deprive a complainant of their right to be heard and represented by legal counsel.

[17] The Board notes that the postponement request has the express consent of the Respondent.

Heard December 6th, 2012.

Dated this 6th day of December, 2012, at the City of Edmonton, Alberta.

Peter Irwin, Presiding Officer

Appearances:

No appearance.

for the Complainant

No appearance.

for the Respondent

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.