

Edmonton Composite Assessment Review Board

Citation: Anna Kiegler, AEC International v The City of Edmonton, 2013 ECARB 00163

Assessment Roll Number: 10125694

Municipal Address: 7211 - 8 Street NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Anna Kiegler, AEC International

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

**PRELIMINARY DECISION OF
Steven Kashuba, Presiding Officer
Pam Gill, Board Member
Taras Luciw, Board Member**

Preliminary Matters

[1] Upon questioning by the Presiding Officer the Complainant indicated that there were two preliminary matters.

Issue #1

[2] Is the Respondent allowed to present surrebuttal?

[3] The Complainant argued that the Board cannot hear evidence that is not allowed by the legislation and surrebuttal is not contemplated by the legislation and therefore should be disallowed. (*Matters Relating to Assessment Complaints Regulation*, AR 310/2009 ("MRAC") s. 8 and s. 9(2)).

[4] The Respondent argued that prior Boards have allowed surrebuttal, and that they are entitled to a response to the rebuttal evidence of the Complainant. (MRAC s. 8(2)(c)).

Decision

[5] The Board is prepared to proceed with the merit hearing and will make determinations with respect to admissibility of surrebuttal evidence as it is received.

Issue #2

[6] Can the Board hear evidence on the Respondent's sales and equity comparables used to defend the assessment if those comparables have not specifically been disclosed to the Complainant pursuant to s.299 of the *Municipal Government Act*, RSA 2000, c M-26 ("MGA")?

Position of Complainant

[7] The Complainant presented written evidence (Exhibit C-1, 41 pages and Exhibit C-2, 99 pages) and oral argument for the Board's review and consideration.

[8] The Complainant argued that a request for information was made pursuant to s. 299 of the MGA (Exhibit C-2, pages A7-A9).

[9] Request #8 reads as follows:

A list of all sales used in developing the municipality's industrial sales model, including values of site characteristics including but not limited to gross leasable area; site coverage; building condition; year of construction; and other factors that may have been considered relevant by the municipality in their analysis of the industrial sales. Furthermore, we request any additional adjustments made prior to or after input of the values into the model and any time adjustments used in the development of the model, and the absolute and time-adjusted selling price for each such property used in developing the municipality's industrial sales model.

[10] The Complainant was provided with a list of title transfers that occurred between January 2008 and June 2012; however, there was no indication by the Respondent as to which sales were used in the model.

[11] The Complainant provided the response by the Respondent to the request at page A-15 (Exhibit C-2). The Respondent indicated that the list of title transfers included all valid and invalid transfers and that "...not all of these transfers were used in the City's valuation model."

[12] The Complainant argued that the Respondent was deliberately clouding the relevant information and ought to have provided the relevant information pertaining to specific sales used to arrive at the assessment.

[13] The Complainant brought forward numerous Court and Board decisions in support of their position (Exhibit C-1).

[14] The Complainant also argued that the issue of whether or not there was compliance under s. 299 was not within the Board's jurisdiction.

[15] Upon questioning by the Respondent, the Complainant indicated that the list of title transfers did include all of the Respondent's sales comparables and that the column headings in the title transfer documents included the information that was requested.

[16] Upon questioning by the Board, the Complainant indicated that further clarification as to the specific sales used by the Respondent in the model was not sought by the Complainant.

[17] The Complainant concluded their remarks by arguing that the assessment is predicated upon the sales model and that if not sales "...what else is there"?

Position of Respondent

[18] The Respondent presented written evidence (Exhibit R-1, 30 pages, Exhibit R-2, 8 pages, Exhibit R-3, 4 pages, and Exhibit R-4, 10 pages) and oral argument for the Board's review and consideration.

[19] The Respondent argued that they had complied with the s. 299 request and that there was no obligation to provide the specific comparable sales transactions as they do not relate to the "sufficient information" under s. 299 of the MGA. (Exhibit R-1, page 14).

[20] The Respondent indicated that the s. 299 request was received on April 2, 2013 and the Respondent had 15 days in which to comply. The complaint was made on March 1, 2013 and the Complainant's disclosure was due on March 9, 2013. The Complainant did not seek a postponement and did not wait for the requested information to include it in their disclosure.

[21] The Respondent brought three Board decisions in support of their position (Exhibit R-2, Exhibit R-3, and Exhibit R-4).

[22] Upon questioning by the Board, the Respondent indicated that had there been a request for the specific sales, they would not have been provided as there is no obligation to do so. They further indicated that the specific sales would have been helpful to the Complainant; however, the Complainant is expected to build their own case and prove that the assessment is wrong.

[23] In the concluding remarks the Respondent argued that a distinction should be made with what is requested and what is required pursuant to s. 299. The Respondent is not obligated to provide the comparables it would use in its defense of the assessment.

[24] The Respondent indicated that the comparable sales were included in the materials provided pursuant to s. 299; however, they were not individually identified.

[25] The Respondent noted that the legislation specifies that information pertaining to the particular property can be requested but not for every property and every sale.

[26] The Respondent stated that the information provided needs to be sufficient as to the assessed property and not to the model itself.

Decision

[27] It is the decision of the Board that the Respondent may use the sales and equity comparables as contained in their disclosure to defend the assessment on June 18, 2013.

Reasons for the Decision

[28] The Board finds that it does have jurisdiction to deal with s. 299 under the MGA. In order apply s. 9(4) of MRAC, the Board is required to examine the information requested by the Complainant and whether or not this information was provided by Respondent.

[29] The Board noted the numerous decisions brought forward by the parties, but placed little weight on them and instead relied on the legislation, particularly the requirements for s. 299 itself.

[30] Section 299 requires the municipality to provide "sufficient information" to the assessed person on "that person's property" to show how the property was assessed.

[31] The Complainant's request (Exhibit C-2, page A-8, request #8) to the municipality was for "all sales used in developing the municipality's industrial sales model..." The Board finds that under s. 299, the Complainant's request is too broad. The request must pertain only to the assessed property itself.

[32] The Respondent did provide the Complainant with information pertaining to the subject property, the detail sheet for the subject itself, the title transfer documents for all the title transfers that occurred between January 2008 and June 2012, details as to how the information is used within the model, and maps of various industrial areas. The Board finds that this information is sufficient to show how the subject property is assessed even though it may require some work on the part of the Complainant to pull the information together.

[33] The Board finds that the Complainant had the opportunity to seek a postponement but did not.

[34] The Board finds that the sales comparables were contained within the title transfers, albeit not individually identified. The Board also took into consideration the letter from the Department of Municipal Affairs (Exhibit R-1, page 14) as to compliance with s. 299:

...the most comparable sales transactions to determine or test an assessment is not related to the relevancy of "sufficient information" under Section 299 of the MGA.

[35] The Board further notes that the assessor could have and perhaps should have provided the Complainant with the comparables to assist in the understanding of the assessment. The Ministry (Exhibit R-1, page 14) is of the opinion that "in the spirit of openness and transparency," all municipal assessors are encouraged "to provide assessed persons with comparables to help explain the assessment."

Legislation

[36] The ***Municipal Government Act***, RSA 2000, c M-26, reads:

s. 1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s. 299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

s. 460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

(a) an assessment notice for

(i) residential property with 3 or fewer dwelling units, or

(ii) farm land,

or

(b) a tax notice other than a property tax notice.

(2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

s. 460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;
- (b) the name and mailing address of an assessed person or taxpayer;
- (c) an assessment;
- (d) an assessment class;
- (e) an assessment sub-class;
- (f) the type of property;
- (g) the type of improvement;
- (h) school support;
- (i) whether the property is assessable;
- (j) whether the property or business is exempt from taxation under Part 10.

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.

[37] The ***Matters Relating to Assessment Complaints Regulation***, Alta Reg 310/2009, reads:

s. 8(1) In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(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, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;

- (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant 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 respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
- (c) the complainant must, at least 7 days before the hearing date, 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 rebuttal to the disclosure made under clause (b) 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. 9(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

Heard commencing May 22, 2013.

Dated this 29th day of May, 2013, at the City of Edmonton, Alberta.

Steven Kashuba, Presiding Officer

Appearances:

John Smiley
for the Complainant

Tanya Smith
Will Osborne
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.