

Edmonton Composite Assessment Review Board

Citation: BRENDA MacFARLAND PROPERTY TAX CONSULTING v The City of Edmonton, 2013 ECARB 00821

Assessment Roll Number: 9998418

Municipal Address: 10004 Ellerslie Road SW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Brenda MacFarland Property Tax Consulting

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF

**Steven Kashuba, Presiding Officer
Brian Hetherington, Board Member
Dale Doan, Board Member**

Preliminary Matters

[1] At the outset of the hearing the Complainant noted that the Respondent was represented by legal counsel while they were not.

[2] In order to have a fair hearing, the Complainant requested that legal counsel representing the Respondent be removed from the hearing. This, in the opinion of the Complainant, would result in a fair hearing.

[3] Alternatively, the hearing be postponed in order for the Complainant to have sufficient time to add legal counsel to their team at a re-scheduled hearing.

Legislation

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

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:

(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.

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

[5] During the process of introductions, the Complainant noted that the Respondent was represented by legal counsel. The Complainant was not represented by legal counsel.

[6] This observation brought into question the question of level of representation by both parties and the element of fairness.

[7] As a result, the Complainant concluded that they were, in the absence of legal counsel, disadvantaged.

[8] Hence, their request to have legal counsel for the Respondent removed from the hearing.

[9] In this regard and based upon the argument presented by the Respondent, the Board ruled that legal counsel for the Respondent did have the right, in accordance with legislation, to attend the hearing (See Decision of Board, which follows).

[10] From this decision of the Board, the Complainant immediately requested a postponement of the hearing in order that they might add legal counsel to their team (See Decision of Board, which follows).

[11] Further to this, the Complainant was of the opinion that legal counsel for the Respondent should have submitted, in writing, their position as regards the Complainant's evidence and their inclusion of precedent cases (See Decision of Board, which follows).

[12] Having regard for #9 and #11, above, and in order to have a fair hearing, the Complainant requested a postponement of the hearing.

Position Of The Respondent

[13] It is the Respondent's position that the Complainant should have anticipated that legal counsel would be in attendance.

[14] First, it is not unusual to have legal counsel present for the Respondent to deal with law and legislation.

[15] Second, since the Complainant did make reference in their disclosure document to precedent legal cases, they should have anticipated that the Respondent would have legal counsel in attendance to deal with matters of law.

[16] Third, there is nothing in legislation which would require legal counsel for the Respondent to submit a rebuttal in writing to the Complainant's evidence, legal argument, or their selection of precedent legal cases in advance of the hearing (See Board Decision, which follows).

[17] The Board concurs with the Respondent that it is not a requirement for them to submit a written response in advance of the hearing (See Board Decision, which follows).

[18] Finally, and although the Respondent requested that the Board proceed to the merits of the complaint, they would abide by the decision of the Board.

Board Decisions

[19] The Respondent does have the right to have legal counsel in attendance at the hearing.

[20] Legal counsel for the Respondent is not required to respond in writing to the Complainant's evidence or legal arguments in advance of the hearing.

[21] As for the Complainant's request to postpone the hearing, it is the Board's decision to grant the request.

[22] The hearing is rescheduled to:

Date: August 23, 2013

Time: 9:00 AM

Location: Edmonton Assessment Review Board Offices

[23] No new notice of the postponed hearing will be sent.

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

Reasons For The Decision

[25] In postponing the hearing, the Board agrees with the Complainant that an important element of a fair hearing is the matter of representation.

[26] In this case, the Board notes that the Respondent had legal counsel in attendance while the Complainant did not.


[27] Although it may be true that the Complainant might have anticipated, in light of their own disclosure, that the Respondent would have legal counsel in attendance to respond to matters of law and precedent legal decisions, is not sufficient reason, in itself, for the Board not to take into consideration the Complainant's request for a postponement based upon the question of representation.

[28] By granting a postponement of this hearing, the Complainant will have ample opportunity to add legal counsel to their team.

[29] For these reasons, a postponement of this hearing is fully justified.

Heard on July 4, 2013.

Dated this 9th day of July, 2013, at the City of Edmonton, Alberta.


Steven Kashuba, 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, RSA 2000, c M-26.