

Edmonton Assessment Review Board

Citation: Eco-Industrial Business Park Inc v The City of Edmonton, 2013 ECARB 01213

Assessment Roll Number: 10150276

Municipal Address: 1250 Hayter Road NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Eco-Industrial Business Park Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF John Noonan, Presiding Officer

Background

[1] The Board has determined that an assessment complaint with regard to the above roll number was filed on March 19, 2013. The deadline for filing was March 11, 2013.

Issue

[2] Is the complaint valid?

Legislation

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

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

- (c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person;

...

Publication of notice

311(1) Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.

- (2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

...

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

...

Address to which a complaint is sent

461(1) A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on that notice.

...

Decisions of assessment review board

467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

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

Documents to be filed by complainant

2(1) If a complaint is to be heard by an assessment review board, the complainant must

(a) complete and file with the clerk a complaint in the form set out in Schedule 1, and

(b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.

(2) If a complainant does not comply with subsection (1),

(a) the complaint is invalid, and

(b) the assessment review board must dismiss the complaint.

[5] Schedule 1 of MRAC [the Complaint Form] reads in part:

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline or complaints without the required filing fee are invalid.

[6] MRAC substantiates the jurisdiction of the ARB:

36(2) A one-member composite assessment review board may hear and decide one or more of the following matters:

(c) an administrative matter, including, without limitation, an invalid complaint

Advice from ARB Administration

[7] The complaint forms for this and five other roll numbers with the same assessed person, Eco- Industrial Business Park, were dated March 11, 2013. The complaints were delivered to the ARB by hand on March 19, 2013.

Decision

[8] The assessment complaint was filed late and is therefore dismissed.

Reasons for the Decision

[9] Section 467(2) of the MGA requires that the Board dismiss a complaint filed after the deadline. The complaint was received on March 19, 2013, which is after the deadline of March 11, 2013 for 2013 annual assessments. Assessment notices were mailed January 2, 2013. The 60 day complaint deadline would therefore fall in early March, but the City allows a further 7 days for receipt of the notice, as per the *Interpretation Act* s 23. The additional 7 days produced a filing deadline for the 2013 taxation year, of Sunday, March 10, 2013. Again, in accordance with the *Interpretation Act*, the deadline was set for the following business day, March 11, 68 days after assessment notices were mailed.

[10] In *Edmonton (City) v Assessment Review Board of the City of Edmonton*, 2012 ABQB 399, Justice Hillier held that the Assessment Review Board does not have discretion to extend the deadline for the filing of complaints. As Justice Hillier states at paragraph 79, “The ARB is required by the MGA to dismiss out of time complaints.”

[11] The decision of Justice Hillier reviewed an ARB preliminary hearing where the Board had allowed a complaint to proceed despite its filing after the deadline. The Board held that the Complainant in that case intended to file a complaint after several unsuccessful attempts to contact and discuss with the assessor the 2010 assessment. The complaint form had been mailed March 8, 2011 and postmarked March 9, in advance of the March 14 deadline that year. The complaint was received March 21. The ARB found that the complaint was late due to circumstances beyond the Complainant’s control, and to deny a hearing on the merits of the case, in the circumstances, would be a denial of natural justice. Justice Hillier disagreed and did so in language that bears repeating to provide an appreciation of the decision’s tenor. The full paragraph 79 reads:

I find that the ARB’s conclusion was unreasonable. The ARB is required by the MGA to dismiss out of time complaints. The ARB concluded that a denial of natural justice would result from applying the statutory deadline to [the Complainant’s] complaint. [The Complainant] had 69 days within which to file his complaint and chose to use the regular mail system several working days prior to the deadline. Even assuming the ARB might extend a deadline for reasons of natural justice in very exceptional cases, it unreasonably concluded that the circumstances in this case were beyond [the Complainant’s] control so as to provide the ARB with discretion not to dismiss the complaint.

The phrase, “Even assuming the ARB might extend a deadline for reasons of natural justice in very exceptional cases...” might support a liberal argument in favour of such a proposition, but

appears to this panel to instruct the opposite: to exclude even very exceptional cases. The door is firmly shut at paragraph 82 where Justice Hillier concludes:

The language chosen to invoke this time limit simply cannot support the exercise of an unexpressed discretion having full regard to the purpose of the legislation.

[12] The Board is bound by decisions of the Court of Queen's Bench, and therefore has no discretion to accept a complaint that has been filed out of time. In discussing procedural mechanics, Justice Hillier concluded at paragraph 83:

Overall, the Decision of the ARB in this matter must be cancelled, to use the words of s.470.1, and is referred back; however, there is nothing to be "reheard" since the Court's direction is that the ARB lacks authority other than to dismiss the complaint under s. 467(2).

The ARB takes instruction from MRAC s 36(2): a one-member composite assessment review board may hear and decide ...an administrative matter, including, without limitation, an invalid complaint. Prior to Justice Hillier's decision, a late complaint set in motion the machinery of conducting a preliminary hearing. The ARB concludes that process is now redundant as there is but one outcome, dismissal. Consequently, the "hearing" of an administrative matter, an invalid complaint, need not extend beyond the advice from ARB administration that a complaint was late. Here, the administration advises the complaint was hand-delivered March 19, 2013, well after the deadline of March 11.

[13] The Board notes that under section 311 of the MGA, where the municipality has advertised that assessment notices have been sent out, all assessed persons are as a result of the publication deemed to have received notice of their assessment.

Heard April 29, 2013.

Dated this 30th day of April, 2013, at the City of Edmonton, Alberta.

John Noonan, 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.