

Edmonton Composite Assessment Review Board

Citation: 1065995 Alberta Ltd. v The City of Edmonton, 2013 ECARB 01252

Assessment Roll Number: 2720282

Municipal Address: 10310 124 Street NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

1065995 Alberta Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

POSTPONEMENT DECISION OF Larry Loven, Presiding Officer

Issues

- [1] Should a postponement of the 2013 Annual New Realty Assessment hearing scheduled for August 30, 2013 be granted as requested by the Complainant?
- [2] Should the prescribed disclosure deadlines be extended as requested by the Complainant?

Background

- [3] The Notice of Hearing, dated April 30, 2013, set the hearing date for the subject property as August 30, 2013 and the filing of the Complainant's disclosure on or before July 18, 2013.

Legislation

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

- (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.

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] The Complainant submitted a request for postponement form dated July 29, 2013 advising that he would be out of the country on business during the scheduled hearing date. The complainant also requested an extension to file disclosure, indicating he had not filed disclosure to date.

Position Of The Respondent

[6] The Respondent submitted their reply on the reverse side of the form on August 1, 2013, refusing to consent to the request for postponement. The Respondent stated they take no position in relation to the request to postpone the merit hearing, however, the Respondent specifically objected to an extension of the disclosure deadline as the Complainant failed to disclose any evidence prior to the disclosure deadline even though he was aware of the deadlines.

Decision

[7] The Board grants the postponement request and amends the disclosure deadlines as noted below.

[8] The hearing is rescheduled to:

Date: **October 8, 2013**

Time: **9:00 a.m. – 12:00 p.m.**

Location: **Edmonton Assessment Review Board Offices**

Disclosure of Complainant's Evidence: **August 26, 2013**

Disclosure of Respondent's Evidence: **September 23, 2013**

Disclosure of Complainant's Rebuttal Evidence: **September 30, 2013**

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

Reasons For The Decision

[10] Even though the request to postpone was dated subsequent to the Complainant's disclosure filing deadline for the merit hearing, the Respondent did not object to the request to postpone the merit hearing, and the Respondent indicated its agreement that the request for postponement be decided on the basis of information provided on the form. The Board finds there is nothing in the legislation that prevents or somehow restricts the filing of a request for postponement subsequent to the Complainant's disclosure filing deadline.

[11] In *City of Edmonton v Edmonton (Assessment Review Board)*, 2010 ABQB 634, at paragraph 43, Justice Germain, providing guidance on the interpretation of section 15 of MRAC quoted above, stated:

The *Regulation* must therefore be interpreted in such a way that the definition of exceptional circumstance cannot be so narrow and restrictive as to prevent hearings that are fair to both litigants.

[12] The Board determines that the reasons provided by the Complainant for the request for postponement meets the definition of exceptional circumstances, given the interpretation of section 15 of MRAC by Justice Germain above; that is, travelling to business meetings in Europe from August 4 to September 4, 2013 during the originally scheduled hearing date of August 30, 2013. Furthermore, as the Respondent has no position in relation to the Complainant's request to postpone the merit hearing, it would be unfair to not grant the Complainant's request for postponement.

[13] Regarding the Respondent's objection to extending the disclosure deadline because of the Complainant's failure disclose any evidence in contravention of section 8 of MRAC, even though the Complainant stated on the request for postponement form a failure to disclose documentary evidence or request an extension in this regard, the Board finds nothing in the legislation restricting the Board from setting new disclosure dates nor does there appear to be a requirement for a party to request new disclosure dates or provide reasons for the request.

[14] In summary, based on its consideration of the above reasons:

- a. also based in part on the Complainant's indication that late September [2013] are the best dates or early October [2013], the Board re-schedules the hearing as indicated above; and
- b. the Board revises the disclosure dates in accordance with section 8(2) of MRAC which specifies that disclosure must be provided at least 42 days before the hearing for the Complainant, 14 days before the hearing for the Respondent and that any rebuttal must be provided at least 7 days before the hearing date.

Heard July 8, 2013.

Dated this 8th day of July, 2013, at the City of Edmonton, Alberta.



Larry Loven, 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.