

Decision Number: PREC 0194 634/2014

Complaint ID: 634

Roll Number: 194030000020

COMPOSITE ASSESSMENT REVIEW BOARD DECISION PRELIMINARY MATTER

HEARING DATE: JULY 17, 2014

PRESIDING OFFICER: V. HIGHAM

The Central Alberta Regional Assessment Review Board (the Board) has been established in accordance with section 456 of the *Municipal Government Act R.S.A. 2000, ch M-26* (the *Act*).

BETWEEN:

LACOMBE INVESTMENTS INC.
(represented by Mr. R. Salomons)

Complainant

and

CITY OF LACOMBE

Respondent

This preliminary matter was heard in respect of a complaint to the Central Alberta Regional Assessment Review Board relative to the following assessment:

ROLL NUMBER: 194030000020

MUNICIPAL ADDRESS: 5001 52nd Street, Lacombe, Alberta

ASSESSMENT: \$1,624,740

This preliminary matter was heard by a one member panel of the Composite Assessment Review Board (CARB) on the 17th day of July, 2014, in the council chambers of the municipal office building in the City of Lacombe (the City).

Appeared on behalf of the Complainant:

- Ralph Salomons Agent

Appeared on behalf of the Respondent:

- Warren Powers Assessor
- Eloise Comrie Assessor

PROCEDURAL OR JURISDICTIONAL MATTERS:

[1] Neither party objected to the composition of the one member panel as introduced.

[2] After introduction of the parties, the Respondent raised the objection that Mr. Salomons has no standing at the hearing to act in any capacity, since he is not identified on the Complaint Form as a Complainant, neither was an Agent Authorization Form filed by the subject owner pursuant to s.51 of the *Matters Relating to Assessment and Taxation* (the *MRAT*), authorizing Mr. Salomon to act in his behalf.

[3] As a point of order, the hearing Clerk present (an employee of the City of Red Deer), advised the Board that Mr. Salomons is a member of the City of Red Deer's Subdivision and Development Appeal Board (SDAB) and periodically works with the Clerk on SDAB matters for that city. The Respondent noted a further objection to Mr. Salomons representation on this additional ground of bias.

[4] After hearing from both parties relative to these objections, the Chair recessed the proceedings to consider the matters and reconvened shortly thereafter with the following rulings:

- 1) Lack of Standing: during the recess period, Mr. Salomons obtained a copy of the agent authorization form set out in Schedule 4 of the *MRAC*, executed by the subject owner, entitling him to act in behalf of the Complainant in the hearing.
- 2) Bias: since the Respondent submitted no evidence to support his objection on this ground, and since the Board found no evidence of pecuniary interest or other identifiable ground of bias which might prejudice the Respondent's case before the Board, the Chair ruled that Mr. Salomons has capacity and standing to act as agent for the Complainant in the within hearing.

[5] Upon reviewing both parties' submissions for the preliminary hearing, the Board noted that all but the first page of the Complainant's submissions pertained to the merits of the complaint filed, rather than to the preliminary matter. The Board therefore struck all but the first page of the Complainant's submissions from the record of this preliminary hearing.

BACKGROUND:

[6] The subject is a commercial property located at 5001 52nd Street in the City of Lacombe, comprising 25,489 square feet (sf) of office space.

ISSUE: MOTION TO DISMISS COMPLAINT

[7] The Respondent filed a request to dismiss the complaint on two grounds:

- 1) Firstly, the Complainant inserted the amount of the subject's 2014 assessed value (\$1,624,740) into the box on the Complaint Form entitled: "Requested Assessed Value" which precludes the Complainant from introducing evidence to support any other assessed value; and
- 2) The Complainant failed to respond to the s.299/300 question on the Complaint Form, rendering the Form incomplete and thereby invalid.

Position of the Parties

Issue: Should the subject complaint be dismissed on the grounds that the Complainant failed to respond to the s.299/300 question on the Complaint Form, and failed to identify an appropriate “requested amount” thereon?

Complainant’s Position:

[8] The Complainant argued that the amount indicated in the “Requested Assessed Value” box on the Complaint Form was submitted in error by the subject owner, who misunderstood the intent of the request. The Complainant argued that the subject owner understood the question to be: “What is the current assessed value the City requests should be paid by the taxpayer?”

[9] The Complainant described the subject owner as a recent immigrant to Canada, lacking the experience and savvy of sophisticated parties before the Board, owing to the fact that this is the first assessment complaint he ever filed. The Complainant further argued that not every company has the financial means to retain lawyers in respect of matters such as an assessment complaint.

[10] Mr. Salomons submitted that he was only retained to act as agent, after the subject owner received notice of the City’s motion to dismiss the complaint, and that Mr. Salomons had not received the disclosure materials relative to this preliminary matter until the day prior to the hearing.

[11] With respect to the Respondent’s reliance on the arguments and conclusions found in CARB 006/2010 (*Budget Rent-A-Car vs. Regional Municipality of Wood Buffalo*), the Complainant argued that in that case, the Complainant failed to include any amount in the “Requested Assessed Value” box, leaving it completely blank. In the subject hearing, the Complainant had in fact indicated an assessed value, albeit in error, but completed nonetheless.

[12] In summary, the Complainant asked the Board to grant a degree of latitude on the facts of this case, since ordinary members of the general public (including the subject owner) typically possess limited understanding and sophistication relative to the rigorous legislative and procedural demands of the assessment complaint process.

Respondent’s Position:

[13] The Respondent argued that the complaint should be dismissed on several grounds, the first being an incomplete Complaint Form, since the Complainant failed to respond to the question on the Form related to s.299 and s.300 of the *Act*, which was left blank.

[14] Secondly, the Respondent argued that since the Complainant failed to identify a “Requested Assessed Value” (other than the current assessment) on the Complaint Form, the Complainant is precluded from introducing evidence to support any amount other than the current assessed value as identified on that form.

[15] In support of this proposition, the Respondent quoted s.9(1) of *MRAC*, which states that:

A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

[16] The Respondent also relied on CARB 006/2010, which concluded that the specific wording of the *Act* required the Board to dismiss the complaint because of an invalid complaint form, since the “Requested Assessed Value” box in that case was left blank. The Board in that case also concluded it had no jurisdiction to cure an invalid complaint form, or to order a new or revised complainant form to remedy the deficiency of the existing form.

[17] The Respondent also relied on Edmonton CARB 00870/2013, referencing Assessment Review Board (ARB) and Municipal Government Board (MGB) decisions which “ruled that they would not alter an assessment, if the requested assessment value was within 5% of the assessment.”

[18] The Respondent further argued that the Complainant in subject hearing is a company that owns a “million plus dollar piece of property” to whom one should ascribe a more sophisticated understanding of business related proceedings, such as property assessment complaints.

BOARD'S FINDINGS AND REASONS:

[19] The Board finds that Complaint Form in the subject hearing was not invalidated by the incorrect “Requested Assessed Value,” nor by the Complainant’s omitting to respond to the s.299/300 question on the Form.

Section 299/300 Question on the Complaint Form:

[20] The Board finds that wording of this question on the Complaint Form is *conditional*, not proscriptive, specifically: “*If information was requested from the Municipality pursuant to sections 299 or 300 of the Act, was the information provided?*” [emphasis added]. The intent of the question is to ensure that Complainants are afforded every opportunity to advance a full case before the Board.

[21] Since the Complainant in this case did not request any information from the Municipality, there is no binding onus on the Complainant to respond to the question in any manner.

Section 9(1) of the MRAC – Issue not Identified on the Complaint Form:

[22] The Board finds that the Complainant identified box number 3 (Assessment Amount) on the Complaint Form as the issue under complaint. The fact that the Complainant erred in identifying the “Requested Assessed Value” does not render the Complaint Form invalid, nor does it preclude the Complainant from requesting a different “Requested Assessed Value” at the hearing than originally identified on the Form.

[23] This box on the Complainant Form merely requires a Complainant to identify an estimated value early in the complaint process, providing a contextual basis for the complaint for both parties to work from. Such requests are routinely altered at the “merit hearing” stage, after full disclosure of both parties’ submissions provides the enhanced research and analysis required to refine and solidify one’s case.

Requested Value “within 5%” of the Current Assessment:

[24] Since the Complainant is free to request a revised “Requested Assessed Value” at the upcoming merit hearing, the Board finds this argument to be moot.

SUMMARY

[25] The Board concludes that the Complaint Form error and omission identified by the Respondent herein do not invalidate either the Form or the Complainant’s procedural right to advance this complaint before the Board, as provided by the *Act*.

[26] For the reasons noted herein, the Board denies the Respondent’s motion to dismiss the subject complaint, and instructs both parties to proceed to the scheduled merit hearing, as directed by the Clerk of the Board and set out in the June 9, 2014, Notice of Hearing.

DATED AT THE CITY OF RED DEER, ALBERTA THIS 21ST DAY OF AUGUST, 2014.



S. Parsons on behalf of
V. Higham, Presiding Officer

This decision can be appealed to the Court of Queen’s Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the *Municipal Government Act* which requires an application for leave to appeal to be filed and served within 30 days of being notified of this decision.

Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"**Documents Presented at the Hearing
and Considered by the Board**

NO.**ITEM**

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| 1. A1 | Agenda and Hearing Materials |
| 2. C1 | Complainant's Disclosure |
| 3. R1 | Respondent's Disclosure |

FOR MGB ADMINISTRATIVE USE ONLY

Decision Number:		Roll Number: 194030000020		
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Jurisdictional/Procedural	Complaint Form Requirements	Lack of Detail on Application Agent Authorization	n/a