

**BOARD ORDER: MGB 011/08**

**IN THE MATTER OF THE** *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**AND IN THE MATTER OF AN APPEAL** from a decision of the 2007 Assessment Review Board (ARB) of the City of Edmonton.

**BETWEEN:**

OPB Realty Inc. represented by Altus Derbyshire - Appellant

- a n d -

City of Edmonton - Respondent

**BEFORE:**

Members:

S. Cook, Presiding Officer  
L. Patrick, Member  
D. Trueman, Member

Case Manager:

P. Kemp

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on October 18, 2007.

This is an appeal to the Municipal Government Board (MGB) from a decision of the 2007 ARB of the City of Edmonton (ARB) with respect to property assessments entered in the assessment roll of the Respondent municipality as follows.

**Roll No.        9976673        13503 St Albert Trail NW**

**Assessment: \$8,982,000**

**BACKGROUND**

This is an appeal from a decision of the ARB rejecting an Issue Statement regarding the 2007 assessment complaint submitted by the Appellant, Altus Derbyshire for the owner of the property OPB Realty Inc., a body corporate established by Ontario Pension Board for holding title to its

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real estate investments. The Complainant is specified in the Complaint Form as 20 Vic Management Inc. c/o Altus Derbyshire. The authorization portion of the Complaint Form describes Altus Derbyshire as the authorized representative. The signature at the foot of the form is that of Anthony Patenaude, a Tax Consultant with Altus Derbyshire. OPB Realty Inc. is listed on the Respondent's assessment roll as the property owner and is addressed OPB REALTY INC C/O VIC MGMT INC/ATT DEB LANG BOX 88 300 QUEEN STREET EAST TORONTO ON M5C 2W5 on those records, including the Annual Realty Assessment Notice for 2007.

The Complaint Form was filed within the permitted time by the Appellant on March 5, 2007. A Notice of Hearing for a Merit Hearing by the ARB was issued on April 2, 2007 setting a hearing date for May 30, 2007 and requiring that the Issue Statement be filed by May 8, 2007. An Issue Statement dated May 8, 2007 was filed by the Appellant on that date with the Clerk of the ARB. On May 17, 2007 the ARB wrote to the Appellant indicating that the clerk of the ARB refused to file the Issue Statement on the ground that the Complainant identified therein was not the property owner nor was there a written confirmation that the Complainant was authorized to act on the owner's behalf. A copy of the decision was provided to the Appellant the same date. That decision was appealed to the ARB and set down to be heard on June 20, 2007. A letter from 20 Vic Management Inc. dated May 16, 2007 and signed on May 17, 2007 was submitted by the Appellant to the ARB on June 18, 2007. The letter stated that 20 Vic Management Inc. is managing agent for OPB Realty Inc., the owner of the property in question, and that the Appellant Altus is authorized to represent 20 Vic Management Inc. on the matters in question.

The hearing took place on June 20, 2007. The decision of the ARB, which upheld the clerk's decision to reject the Issue Statement, stated that the May 16, 2007 letter from 20 Vic did not provide the ARB with acceptable authorization of the Appellant because it was not signed by the owner. However, the ARB granted an adjournment to 4:30 p.m. that day to give the Appellant an opportunity to produce a further document signed by OPB Realty Inc. Within that time a document issued by OPB dated August 19, 2005 entitled "Notice And Direction To Contractors" was submitted to the ARB by the Appellant. The document informed of the purchase of the subject property by OPB Realty Inc. and directed all dealings respecting the property to be with 20 Vic Management Inc. The ARB refused to accept that document as authority as it did not specifically address the issue of assessment appeals.

### **PRELIMINARY ISSUE**

The decision of the ARB was appealed to the MGB July 19, 2007 on the grounds that the provisions of Section 460(3) of the Act had been met. An acknowledgement letter from the MGB to the parties dated August 14, 2007 directed the attention of the parties to the provisions of section 9 of the *Assessment Complaints and Appeals Regulation AR 238/2000 (ACAR)* regarding any new evidence to be introduced. The hearing was then scheduled for October 18, 2007, thus establishing that the deadline for exchanging any new evidence was September 17, 2007. On October 11, 2007 OPB Realty Inc. provided the Appellant with a letter addressed to the

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Respondent. The letter is dated October 11, 2007 and states that the Appellant is their authorized representative in the 2007 assessment matters regarding this property. The Appellant filed the letter with the MGB and exchanged it with the Respondent on that same day.

The Respondent argued that the MGB ought not to consider the October 11, 2007 letter because the time allowed for the introduction of new evidence had passed. Not only had the time expired but it was seven months after the filing of the complaint. The Respondent argued that the brief time between the production of letter dated October 11, 2007 and the hearing left little opportunity for the Respondent to reply effectively. The Respondent challenged the jurisdiction of the MGB to grant an extension of time under s.10 of ACAR in a case where the production of new evidence occurred so late in the proceedings. The Respondent suggested this was an abuse of the appeal process, referring to MGB 077/05 (Skyline Land Holdings Inc. v. Calgary) in support. The Respondent submitted that the MGB should consider costs against the Appellant for the delay.

The Appellant disagreed with the Respondent's position that the letter of October 11, 2007 should not be allowed into evidence and that costs should be assessed against the Appellant. The Appellant noted that section 9(2)(b) of ACAR states that the MGB may on appeal hear any new evidence necessary to decide an issue before it. The Appellant also made reference to s.10(2) of ACAR which authorizes the MGB to abridge the time specified in s. 9(2) for doing anything described by that section in respect of an appeal. The Appellant indicated that it was prepared to proceed without the October 11 letter if the MGB so decided.

The MGB reserved its decision on the preliminary issue until after the evidence and argument on the main issue had been presented.

### **ISSUES**

To decide this matter, the MGB considered the following issue:

Was Altus Derbyshire an authorized agent for the property owner at the time of the complaint?

### **LEGISLATION**

#### ***Assessment Complaints and Appeals Regulation AR 238/2000 (ACAR)***

A complainant is required to file an issue statement for a complaint against a property assessment of \$250,000 or more.

*3(1) If a complaint is to be heard by an assessment review board, the complainant must*  
*(a) file the complaint in accordance with the Act,*

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- (b) pay the appropriate complaint fee at the time the complaint is filed, if, in accordance with section 481 of the Act, a fee is required by the council, and*
- (c) file an issue statement with the clerk of the assessment review board and with the assessor of the municipality at least 21 days before the hearing date of the complaint.*

Issue statement requirements are listed.

*3(2) An issue statement must be in the form set by the municipality and must*

- (a) be in writing,*
- (b) set out in detail the grounds of complaint, the particular facts supporting each ground of complaint and the change to the assessment roll or tax roll that is requested by the complainant,*
- (c) include a statement that the complainant and the respondent have discussed the complaint, specifying the date and outcome of that discussion, including the details of any facts or issues agreed to by the parties,*
- (d) include a statement, if the complainant and the respondent have not discussed the complaint, specifying why no discussion was held, and*
- (e) estimate the amount of time the complainant needs to present evidence in support of the complaint to the assessment review board.*

The timing of the ARB hearing notice affects whether an issue statement is required.

*3(3) If the clerk of the assessment review board sends a notice of hearing to a complainant on a date that is less than 45 days before the hearing date, the complainant is not required to comply with subsection (1)(c).*

Consequences for the failure to meet the issue statement requirements are provided.

*3(4) Subject to subsection (3), if a complainant does not comply with subsection (1), the complaint is invalid and the assessment review board must not hear the matter and the clerk of the assessment review board must so notify the complainant.*

*(5) If a complainant who files an issue statement does not comply with subsection (2), the clerk of the assessment review board may refuse to file the issue statement.*

*(6) A complainant may appeal a refusal under subsection (5) to an assessment review board within 14 days of being notified of the refusal.*

However, discretion to expand or abridge the time for filing the issue statement has been provided.

*10(1) An assessment review board may at any time, by written order, abridge or expand the time specified in sections 3(1)(c) and 4(1), (2) and (3) for the doing of anything described in those sections in respect of a complaint.*

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*(2) The Municipal Government Board may, by written order, abridge or expand the time specified in section 9(2) for the doing of anything described by that section in respect of an appeal.*

### ***Municipal Government Act***

The Act indicates who may make an assessment complaint

*460(3) A complaint may be made only by an assessed person or a taxpayer*

The MGB has the authority to hear appeals from decisions of the ARB, and can make any decision that the ARB could have made on the matter before it.

*470(1) The decision of an assessment review board may be appealed to the Municipal Government Board.*

*488(1) The Board has jurisdiction*

*(c) to hear appeals from decisions of assessment review boards, ... .*

*499(1) On concluding a hearing, the Board may make any of the following decisions:*

*(d) make any decision that the assessment review board could have made, if the hearing relates to the decision of an assessment review board; ... .*

### **SUMMARY OF APPELLANT'S POSITION**

The Appellant submitted that even without the October 11, 2007 letter, when all of the other correspondence is considered together it is clear that a chain of delegation existed from OPB Realty to 20 Vic Management Inc. to the Appellant. This is in accordance with the practice of the filing of complaints relating to real estate assessment in the City of Edmonton, as borne out by the actions of the ARB in looking at the letter from 20 Vic Management Inc of May 18, 2007 and granting a short time for the Appellant to endeavour to obtain something signed by the owner OPB Realty Inc.

### **SUMMARY OF RESPONDENT'S POSITION**

The Respondent submitted that the materials filed used the name "20 Vic Management Inc." whereas the entry on the assessment records of the Respondent described the corporation as "Vic Mgmt Inc." and no such corporation existed. The Respondent submitted that the difference in the corporate names suggests that there are two different entities. Thus, the Respondent was entitled to presume that material with the name 20 Vic Management Inc. was from another corporation that the ARB did not have to recognize in determining the authorized representative.

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The Respondent also argued that the 2005 document signed by OPB Realty Inc. entitled “Notice and Direction to Contractors” was not current and was vague as to the subject matter it dealt with. It made no reference to the assessment matters with the Respondent. The fact that the document was addressed to “contractors” suggested it had to do with construction or maintenance at the property.

The Respondent submitted that the ARB clerk rejected the Issue Statement as a result of the decision of the Court of Queen’s Bench in Calgary v. Alberta, 2007 ABQB 47. In that decision the court held that the owner or assessed person were the only parties entitled to file a Complaint against an assessment. In the Respondent’s view, there was insufficient evidence to establish that the Appellant was an authorized representative of the owner or assessed person within the meaning of the Act and the decision of the Court. As this is not a lateness issue there is no jurisdiction for the MGB to allow the extension of time, and as the materials submitted to the ARB were lacking any meaningful connection to the owner, the decision of the ARB ought to be upheld and the appeal dismissed.

### **FINDING**

Altus Derbyshire was an authorized agent of the property owner at the time the complaint was launched.

### **DECISION**

The appeal is allowed and the appeal will be set down for a merit hearing before the MGB in accordance with its practice.

It is so ordered.

### **REASONS**

Although the October 11, 2007 letter from OPB Realty Inc is not fundamental to this decision, the issue of the late filing of this new evidence and the impact of the evidence should not be disregarded. Given the content of the letter and its author, it becomes very clear that the owner had in fact delegated responsibility for property assessment matters to the Appellant. The letter confirmed to the Respondent and to the MGB what was apparent from the other documents, and is consistent with the Appellant’s position. The MGB considers that this situation is one where it ought to exercise its discretion and extend the time for filing the October 11 letter as it so directly addresses the main issue in this matter. The MGB considers that the taxpayer’s right to complain against an assessment is a basic right, key to the integrity of the real property tax regime. It is incumbent on the taxing authority to ensure that unfair application of rules or policies does not prejudice the taxpayer or operate so as to deny him his rights.

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The letter from 20 Vic Management Inc. dated May 16, 2007 to the Respondent was essentially in keeping with assessment records of the Respondent. If the ARB had had any doubt that the Appellant was properly authorized after considering that evidence, then the August 19, 2005 document entitled “Notice and Direction to Contractors” ought to have dispelled it by demonstrating how the owner had gone about organizing its affairs with respect to the management of the property.

Moreover, the Respondent’s assessment records show that dealings with the owner of the subject property were to be in the care of another party; thus the issue of agency takes on a different set of parameters. While the MGB recognizes that the Annual Realty Assessment Notice for 2007 listed the owner as “OPB Realty Inc. c/o Vic Mgmt Inc.” rather than “c/o 20 Vic Management Inc.”, the MGB does not accept the Respondent’s argument that this clerical error should deprive the owner of its right to make a complaint. Sending the assessment notice to Vic Management rather than directly to the property owner suggests that the assessment office knew it was dealing with a delegate retained to manage assessment matters for the owner. It is not clear to the MGB why – when the discrepancy in the name came to light – steps were taken to deny the taxpayer its right of complaint rather than to correct the name or make enquiries as to the correct name of the agent appearing on the assessment notice.

With respect to the Respondent’s arguments concerning the decision in Calgary v. Alberta, the MGB notes that Calgary v. Alberta dealt with a different issue than that in this case. Here the issue is the degree of proof necessary to establish agency. The issue in that case was the meaning of the terms “assessed person” and “taxpayer” in the legislation.

The Respondent argued that, as the clerk refused the issue statement pursuant to ACAR s. 3(1)(a) and this was not a s. 3(1)(c) issue dealing with filing timelines, the MGB has no jurisdiction to exercise its discretion and extend the timelines for filing an issue statement. Given the finding that the Appellant was the authorized agent for the owner, it is not necessary for the MGB to address the ARB decision in terms of the clerk’s authority to refuse the issue statement under ACAR s. 3(1)(a). However, it is worth mentioning that section 3(5) of ACAR is the only section that authorizes the clerk to refuse an issue statement. Section 3(5) states that the clerk may refuse to file an issue statement that does not comply with section 3(2). Section 3(2) deals with the form and content of the issue statement. Therefore, it appears that under the legislation the clerk may only refuse to file an issue statement where the perceived deficiency is with the issue statement itself, not with the person who files it. As indicated in the clerk’s decision and agreed by both parties at the hearing, there was no deficiency in the issue statement.

Parties wishing to apply for costs should do so within 30 days of receipt of this Order.

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**SUMMARY**

This decision concerns the rejection of an issue statement by the clerk of the ARB on the ground that the party filing the issue statement was not the property owner and had not established to the clerk's satisfaction that it was the owner's agent. The clerk's decision was upheld by the ARB, which found that letters submitted to it were insufficient to establish the Appellant was authorized to deal with assessment complaints on behalf of the owner. On appeal to the MGB, the Appellant presented further evidence that it was in fact the owner's authorized representative. The additional evidence was submitted outside the time limits normally required under section 9 of the *Assessment Complaints and Appeals Regulation (ACAR)*.

The MGB allowed the appeal. The letters before the ARB alone were sufficient to show that the Appellant had the requisite authorization. Further evidence submitted to the MGB outside the normal ACAR time limits also made very clear that the owner had delegated responsibility for property assessment matters to the Appellant. Under the circumstances, the MGB was prepared to exercise its discretion under ACAR section 10(2) to extend the time limits for submission of new evidence.

Dated at the City of Edmonton, in the Province of Alberta, this 18<sup>th</sup> day of January 2008.

MUNICIPAL GOVERNMENT BOARD

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S. Cook, Presiding Officer

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**APPENDIX "A"**

**APPEARANCES**

<b>NAME</b>	<b>CAPACITY</b>
A. Kaplan	Solicitor for the Respondent
A. Patenaude	Agent for the Appellant

**APPENDIX "B"**

**DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:**

<b>NO.</b>	<b>ITEM</b>
1A	Disclosure of Evidence and Written Argument of the Appellant
2A	Appellant's legislation package
3R	Respondent's Legal Brief
4R	Respondent's Evidence Package
5R	Respondent's Law package
6R	Respondent's Reply to Complainant's Submission