

BOARD ORDER: MGB 067/05

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 2004 Assessment Review Board (ARB) of the 2004 City of Calgary.

BETWEEN:

354034 Alberta Limited represented by Alanna Brown Consulting - Appellant

- a n d -

City of Calgary - Respondent

BEFORE:

Members:

Mr. A.H. Savage, Presiding Officer
Mr. H. Naboulsi, Member
Dr. E.J. Thompson, Member

Upon notice being given to the affected parties, a hearing was held in the City of Calgary, in the Province of Alberta on April 7, 2005.

This is an appeal to the Municipal Government Board (MGB) from a decision of the 2004 ARB of the City of Calgary (City) with respect to property assessments entered in the business assessment roll of the Respondent municipality as follows.

Roll No.	Address	Assessment
200176154 0130	48 Heritage Gate SE	\$148,954
200176154 0040	28 Heritage Gate SE	\$260,820

OVERVIEW

Alanna Brown Consulting, acting as an agent for the business owner/assessed person, made an application to the MGB to bring an appeal for two business tax assessments. Approximately one month after the application was received by the MGB, the business owner/assessed person withdrew the appeals. Alanna Brown Consulting argued that it, as the Complainant, was the only party who was legally permitted to withdraw the appeals. The primary issue for the MGB was whether the MGB had jurisdiction to hear the withdrawn appeals. To determine this, the MGB considered whether Alanna Brown Consulting was acting as an agent for the business

BOARD ORDER: MGB 067/05

owner/assessed person. The MGB then had to decide whether the appeals were properly withdrawn or whether the appeals could be reinstated.

BACKGROUND

Alanna Brown Consulting, the agent of 354034 Alberta Ltd., filed an appeal with the MGB for two business assessments. Subsequently, the business owner/assessed person sent the MGB a request to withdraw the appeals without the knowledge of the agent. When Alanna Brown Consulting became aware of the situation, a letter was sent by the business owner/assessed person to the MGB requesting that the appeals be re-instated. The administration of the MGB acknowledged the request by the business owner/assessed person for the re-instatement of the appeals. Thereupon a hearing was organized in order for a panel of the MGB to decide whether the appeals were properly before the MGB.

The following summarizes the timeline of events.

- | | |
|-------------------|--|
| March 01, 2004 | Alanna Brown Consulting filed business assessment complaints on behalf of two businesses owned by 354034 Alberta Ltd. |
| June 29, 2004 | The City of Calgary ARB heard the complaints and confirmed the assessments. |
| July 14, 2004 | The ARB notice of decision was mailed to Alanna Brown Consulting. |
| August 13, 2004 | Alanna Brown Consulting faxed the MGB applications for appeal in regard to both business assessments. |
| September 2, 2004 | Mr. Ken Toon, the owner of 354034 Alberta Ltd., notified the MGB by letter that he wished to withdraw the subject appeals. |
| September 7, 2004 | The MGB acknowledged, by letter to Alanna Brown Consulting, the withdrawal of the subject appeal and advised that the subject files had been closed. |
| October 12, 2004 | Mr. Ken Toon requested, by letter to the MGB, that the subject appeals be re-instated. |
| October 18, 2004 | The MGB, by letter, advised Alanna Brown Consulting that the subject appeals had been re-instated and gave revised dates of disclosure. |
| April 7, 2005 | A hearing was held in which the City raised the jurisdiction of the MGB to hear the appeals. |

BOARD ORDER: MGB 067/05

For clarity in this order Alanna Brown Consulting will be referred to as the Agent and 354034 Alberta Ltd. will be referred to as the business owner/assessed person.

As required by section 6 of the *Assessment Complaints and Appeals Regulation 238/2000* (ACAR) and within 14 days of the filing of the subject appeal, the ARB submitted to the MGB a record of the hearing before the ARB. However, as there is no dispute respecting the introduction of evidence not before the ARB or the raising of issues not before the ARB, the record was not reviewed or considered by the MGB in arriving at its decision.

ISSUES

1. Can the business owner/assessed person withdraw an appeal for the Agent?
 - a. Is Alanna Brown Consulting an agent of the business owner/assessed person 354034 Alberta Ltd.?
2. Does the MGB have jurisdiction to hear the subject appeals?
3. Can the appeal be re-instated?

LEGISLATION

Municipal Government Act

448(1) The Board has jurisdiction

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

(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a), (b) and (c).

The Act also sets out who may file an appeal, and the process for doing so.

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

(2) Any of the following may appeal the decision of an assessment review board:

(a) an assessed person;

(b) a taxpayer;

(c) an assessor;

(d) a municipality, if the decision being appealed relates to property that is within the boundaries of that municipality.

491(1) Any matter that is to be dealt with by a hearing before the Board must be in the form of a written statement and must be filed with the administrator within the following periods:

BOARD ORDER: MGB 067/05

(c) for an appeal from the decision of an assessment review board, not later than 30 days after the decision is sent to the complainant.

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

(a) dismiss a complaint or an appeal that was not made within the proper time;

SUMMARY OF APPELLANT'S POSITION

The withdrawals of the appeals came about owing to lack of communication between the Agent and the business owner/assessed person. The Agent had moved premises and suggested that the business owner/assessed person did not receive the new contact information. As a result of this, the Appellant contended that the business owner/assessed person made a telephone call to the ARB on or about September 2, 2004 during which he was encouraged to withdraw the appeals. The Appellant alleged that the ARB gave the business owner/assessed person procedural instructions and contact names to follow through with the withdrawal. The Appellant argued that the actions of the ARB, as employees of the City, were in bad faith and undermined the relationship between the business owner /assessed person and the Agent.

The Agent in this case was the party that filed the appeals to the MGB and was not the party that withdrew the appeals. The Appellant contended that if the business owner/assessed person were legally entitled to withdraw an appeal that was made by an assessed person and/or taxpayer other than the business owner/assessed person then the business owner/assessed person would be the "ultimate authority". As the legislation does not express an intention for the business owner/assessed person to be the ultimate authority in this manner, the party who filed the complaint should be in control over the withdrawal. Further, the business owner/assessed person did not dissolve the relationship with the Agent, and the Agent was at all times acting on behalf of the business owner/assessed person.

The Appellant argued that if the MGB decides that the business owner/assessed person has the authority to withdraw a complaint made by another party, the MGB should allow the business owner/assessed person to re-instate the appeal. In the present situation the business owner/assessed person clearly expressed to the MGB in writing the desire to re-instate the appeals.

The Appellant acknowledged Board Order MGB 109/00 but argued that the current appeal could be distinguished from the situation in MGB 109/00 because in that case it was the complainant who made the withdrawal, whereas in this case the business owner/assessed person was not the complainant.

BOARD ORDER: MGB 067/05

SUMMARY OF RESPONDENT'S POSITION

The City's position is that when an appeal is withdrawn it cannot be re-instated unless it is re-filed within the statutory time period. The Respondent brought MGB 109/00 as evidence to support this stance. In MGB 109/00, the MGB decided that once an appeal is withdrawn, even if it is inadvertent, the appeal cannot be re-instated.

The Respondent submitted that in this situation the provision allowing for any assessed person or taxpayer to appeal an assessment does not apply. The City argued that the Agent is acting as an agent for the business owner/assessed person and not as a separate entity.

The Respondent protested that the allegations made by the Appellant in regard to the actions and comments of City employees are unfounded and unwarranted. Further, the Respondent argued that there was no evidence to support this allegation and no incentive for the employees to act as alleged. The Respondent requested that the MGB give no weight to this argument.

FINDINGS OF FACT

Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B attached, the MGB finds the facts in the matter to be as follows.

1. Alana Brown Consulting is acting as the agent of 354034 Alberta Ltd. for the purposes of appealing business tax assessments.
2. The actions of the Agent are inseparable from that of the business owner/assessed person.
3. The business owner/assessed person has the right to withdraw the appeals.
4. Once an appeal has been withdrawn, it cannot be re-instated unless a new appeal is brought within the specified time frame.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out below.

DECISION

The appeal is denied – no jurisdiction.

It is so ordered.

BOARD ORDER: MGB 067/05

REASONS

Party withdrawing the Appeal

The MGB found from the evidence that the Agent was at all times acting as agent for the business owner/assessed person pursuant to section 470(2)(a) “assessed person” of the Act for the purpose of the subject appeals. There is no evidence to support the contention that the Agent was acting as an individual assessed person or taxpayer pursuant to section 470(2)(b) “a taxpayer” separate from the business owner/assessed person in making the application to the MGB. The argument presented by the Appellant that the business owner/assessed person and Agent were not in communication with each other is irrelevant to the fact that the Agent was authorized for the purpose of the appeal to act for the business owner/assessed person. In further support, the MGB looked to the fact that the agency relationship had never been terminated. The actions of the Agent and business owner/assessed person bind each other and are one and the same, therefore the withdrawal of the appeal by the business owner/assessed person bound the Agent.

The MGB did not accept the Appellant’s ‘ultimate authority’ argument. With the finding that the Agent was acting as agent for the business owner/assessed person, this argument does not apply.

The MGB was not persuaded by the Appellant’s evidence that the ARB encouraged the business owner/assessed person to withdraw the complaint. The MGB accepts the evidence of the Respondent that the City and the ARB are not related and thus there is no incentive for the alleged actions. As well, the MGB found the Appellant did not present sufficient evidence to support this argument.

Jurisdiction

There is no provision in the Act regarding the reinstatement of an appeal that has been withdrawn. Consequently, the MGB must look to previous decisions on this point for guidance. Although the MGB is not bound by past decisions, the MGB found Board Order MGB 109/00 presented in evidence to be applicable to the current circumstances. Board Order MGB 109/00 clearly held that the MGB does not have the jurisdiction to re-open an appeal that has been withdrawn. Once an appeal has been withdrawn there is no complaint for the MGB to hear.

Although the situation in MGB 109/00 was slightly different, the results are the same. In MGB 109/00 the agent withdrew the appeal by mistake. In this case, the Appellant argued that the business owner/assessed person had withdrawn the appeal by mistake. As in MGB 109/00, it does not matter whether the withdrawal was undertaken in error. The end result is the same – the appeal is withdrawn and there is no longer a complaint for the MGB to hear. Further, in Winnipeg (City) Assessor v. Winnipeg (City) Board of Revision [1993] M.J. No. 632 the court determined that when there is no application to hear, the MGB has no jurisdiction. This was

BOARD ORDER: MGB 067/05

presented by the Appellant as being the most similar to the current circumstances, and was accepted by the MGB as being applicable to the subject appeals. The only means for the appeals to be heard would have been for the Appellant to re-file the appeals with the MGB within the statutory time frame. The request to reinstate the appeal by the business owner/assessed person was not received until October 18, 2004 well beyond the deadline for filing the appeal which was August 20 (inclusive of mailing time). Clearly the re-instatement request was not made within the timeline required by the Act for filing an appeal to the MGB.

No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 20th day of July 2005.

MUNICIPAL GOVERNMENT BOARD

(SGD.) Dr. E.J. Thompson, Member

BOARD ORDER: MGB 067/05

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
A. Brown	For the Appellant
K. Hess	For the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Letter from Property Owner
2A	Appellant's April 25, 2005 submission
3R	Respondent's April 25, 2005 submission
4A	Appellant's May 9, 2005 submission
5R	Respondent's May 9, 2005 submission
6R	Clarification Letter from Respondent