

IN THE MATTER OF A COMPLAINT filed with the City of Calgary Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

The City of Calgary – Applicant

- a n d -

Linnell Taylor Assessment Strategies - Respondent

BEFORE:

Members:

Paul G. Petry, Presiding Officer

A preliminary hearing was convened on May 12, 2010 in the City of Calgary in the Province of Alberta to consider an application brought by the City of Calgary (Applicant) concerning assessment complaints filed by Linnell Taylor Assessment Strategies (Respondent) with respect to the following roll numbers:

Roll Number - 068206804

Roll Number - 067072009

BACKGROUND

Assessment complaints for the 2010 tax year were filed with the City of Calgary Assessment Review Board (ARB) on February 17 and February 25 respectively for the above noted properties. The City of Calgary indicated that after the general filing of the 2010 assessments complaints, the City had originally sought upwards of 2000 separate preliminary jurisdictional hearings to consider applications to dismiss the complaints because of non compliance respecting the completion of the complaint form (schedule 1 of the Matters Relating To Assessment Complaints Regulation (MRAC). This number was later reduced to 52 cases which the Applicant suggested will hopefully set the ground work as to the CARB guidelines and expectations for some years ahead. The subject complaints are two among the 52 cases which will come before the CARB for similar reasons. The primary focus of the alleged non compliance is with respect to Section 5 of the complaint form (schedule 1 of MRAC). The Respondent to the City of Calgary's application believes that their complaints with respect to the subject properties are in full compliance with MRAC Section 2, and therefore valid and should not be dismissed.

The ARB scheduled preliminary jurisdictional hearings, for May 12, 2010 to consider the City of Calgary's application to dismiss the subject complaints.

ISSUE

Have the complainants failed to comply with MRAC section 2(1) and if so is the complaint invalid?

POSITION OF THE PARTIES

Applicant's Position

The Applicant argues that MRAC section 2 requires that a complainant must complete and file their complaint with the clerk in the form set out in schedule 1 of MRAC and failure to comply with this requirement results in the complaint being invalid and the ARB whether it be a LARB or a CARB must dismiss the complaint. It was argued that "must" is to be construed as imperative and this is consistent with authorities on administrative law and interpretations by the courts. The Applicant argues that compliance with the formalities and conditions set out in schedule 1 are essential to the acquisition of the right being conferred, in this case the right to complain about one's assessment. The more specific breach alleged by the Applicant relates to serious deficiencies with respect to the information provided in sections 4 and 5 of schedule 1 wherein the complainant failed to provide reasons in the form of issues, grounds or the requested assessment. The Applicant argues that this information is mandatory and that this degree of detail is required for the Applicant to prepare for the merit hearing and to allow it to determine whether meaningful dialogue can occur toward finding a resolution of the issues. Section 4 asks the complainant to identify which of the matters set out in 460(5) of the Act is the subject of the complaint and whether a request for information has been made under sections 299 and 300 of the Act. Section 5 of the complaint form asks for reasons for the complaint including:

- What information shown on the assessment or tax notice is incorrect
- In what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the ARB, and the grounds in support of these issues
- What the correct information is
- If the complaint relates to an assessment, the requested assessed value

A bolded note in this section of the form reads: "**An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form**". This warning is in reference to section 9(1) of MRAC.

The Applicant relying on Black's Law Dictionary argued that an "issue" is a point in dispute between two or more parties and a "ground" is to provide a basis for something. In this case the complainant has not properly set out the specific issues and grounds have not been listed for their complaint issues. Further the complainant has not identified the requested assessment but rather suggests that the stated values are preliminary estimates. This again, in the view of the Applicant,

does not comply with the requirement of section 2 and schedule 1 of MRAC. Given that the complainant has not complied in completing schedule 1 the Applicant argues that the CARB has no choice but to declare the complaints to be invalid under section 2(2) and to dismiss the complaints.

Respondent’s Position

The Respondent was critical of the Applicant for relying on generic deficiency argument and examples rather than dealing more directly with the actual complaints filed for the subject properties. The Respondent indicated that the complaint had been accepted by the ARB clerk and this review step should say something as to the completeness of the complaint form. (The Applicant did not distinguish between the two subject complaints with respect to their arguments and therefore the CARB will use the complaint form submitted for roll number 068206804 to demonstrate how the forms were generally completed). The Respondent indicated that the question regarding request for information under 299 and 300 was left blank not to side step the matter but at that time no request had been made. The Respondent indicates at the beginning of the section 5 attachment that the assessed value is incorrect and the assessed value is too high. Then he goes on to the question relating to issues and supporting grounds, by two columns one headed Specific Issues / Grounds and a juxtaposed column headed Supporting Facts. Under these headings the Respondent sets out four aspects of the complaint as follows:

Specific Issues / Grounds	Supporting Facts
Highest and Best Use as interpreted by the ABU is flawed	MGB 093/07, 095/04 ARB 0482/2009-P & 2009 MGB Decision plus an array of missing conditions required to meet the test of “Likely and Probable Use” or the requirement for “imminent”.
Assessment calculated on Land-as-if-Vacant is incorrect and inequitable	The DAAM, MGA 289(2) AR 220/2004 A theoretical, unfounded and unapproved basis of assessment that is anticipatory beyond the December 31 timeline and absent from the MGA, MRAT and the DAAM. Other assessments.
Assessment is excessive	Income Approach supports a lower assessment for the subject.
Assessment is excessive on an Actual land value basis	Market sales of actual vacant land adjusted where required as well as improved property sales assessed as land only.

The Respondent then answers the question as to what the correct information is with “Income Approach supported by land value as a secondary indicator”. The requested value is completed in both complaints, however the Respondent goes on to explain on the attachment that these values are preliminary estimates until typical due diligence has been completed. The Respondent who is an AIC member also explained there can be a conflict with respect to professional obligations and the suggestion that a precise value be entered on the complaint form. Further to the points already made, an assessment can be any value within a reasonable range of values and

not necessarily a single point value. The Respondent also provided comments on the question as to whether there have been discussions with the Assessor. The Respondent stated that it has followed a similar scheme to providing information sought in section 5 of the complaint form to that taken in the previous year's issue statement and argues that the information provided fully complies with the MRAC regulation. With respect to the Applicant's concern that the Respondent had not answered the most important part of the process which the Applicant seems to relegate to that of a formality is the disclosure stage. The Applicant takes a position that if adopted would mean the Respondent would essentially be required to render their entire disclosure at the time of filing the complaint. The Respondent requests that the CARB decide to reject the Applicant's opinion on these matters and allow the complainants to proceed to a merit hearing.

Decision

Legislative Requirements

The Applicant has taken the position that the subject complaints do not comply with the requirements of MRAC (1)(a) and therefore the complaints are invalid and must be dismissed as set out in MRAC 2 (2)(a) and (b). Before considering the wording of the regulations it is important to review the context provided by the Municipal Government Act (Act). Section 460(5) indicates that "a complaint may be related to any of the following matters, as shown on an assessment or tax notice". The Board finds that the over arching requirements for a complaint relating to any of the ten matters set out in 460(5) of the Municipal Government Act (Act) are those set out in section 460(7) which reads as follows:

(7) "A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment"

The CARB places significant weight on the 4 complainant obligations referred to above as first, they are set out in the Act which takes precedence over the regulations including schedule 1 and second, they are preceded with the imperative words "a complainant **must**". The Act in section 467(2) further reinforces the significance of the complainant's 4 obligations under 460(7) by providing that the Assessment Review Board (ARB) **must** dismiss a complaint that does not comply with 460(7). That being said there is language used in this section that is not absolutely clear as to what is expected. The root of the Applicant's complaint validity challenge appears to stem primarily from section 460(7)(b) wherein the requirement calls for the complainant to "explain in what respect that information is incorrect". The MRAC regulations, apart from the

schedule 1 (the complaint form), provides no further elaboration with respect to what may be meant by the words "explain in what respect that information is incorrect". It also must be kept in mind that the information being referred to in 460(7)(b) are not the details respecting the development of an assessment but rather the basic information which is shown on an assessment notice or tax notice. In this case 460(5)(c) an assessment. The Applicant argues that based on MRAC 2(1)(a) there is a requirement that the complaint form be complete in every respect leaving no room for partial completeness. Section 5 of the complaint form mirrors the requirement in section 460(7) of the Act but adds that reasons for the complaint must accompany the complaint form, including identifying the specific issues related to the incorrect information that are to be decided by the ARB, and the grounds in support of these issues. The Applicant argues that an "issue" is a point in dispute and that "grounds" are the basis for the point in dispute. Further this information is mandatory and the detail provided must be sufficient to allow the Applicant to prepare for the merit hearing and allow it to determine whether meaningful dialogue can occur toward finding a resolution of the issues.

The CARB does not accept that the legislation intended this level of detail to be provided at the point of filing a complaint. In order for a complainant to do so it would require that the complainant, before filing a complaint, will have completed all of their investigations and analysis as to the reasonableness of both the market value of their property and whether the value established by the assessor is equitable considering the assessments of similar property. If this could and should be done it would negate the need for the very detailed and binding disclosure rules set out in MRAC section 8, 9 and 10. The Applicant will in accordance with section 8(2)(a) receive full disclosure of the complainant's case 42 days prior to the hearing. The Applicant then has 28 days to prepare and disclose their response to the complainant's case. In view of these provisions it would be unreasonable and premature to remove the property owners right to have its complaint heard based on standards of disclosure at the time of the complaint that are not justified by clear and unambiguous provisions of the Act and MRAC. The terms used to describe the information required by section 460(7) of the Act and those used to describe what information is being sought in section 5 of MRAC schedule 1 are not absolute or exacting. There are no definitions in the Act or MRAC for the words; matters, explain, reasons, issues or grounds. It appears to the CARB however that MRAC section 9(1) is helpful as it provides some clarity as to what is meant by the phrase used in section 460(7)(b) of the Act "explain in what respect that information is incorrect". MRAC 9(2) states that "a CARB must not hear any matter in support of an issue that is not identified on the complaint form". The CARB therefore concludes that the form of explanation that is required by 460(7)(b) are **the issues** which should speak to why the complainant believes the assessment or any of the other matters on the assessment or tax notice may be incorrect. Under 460(7)(b) "a complainant must" provide an explanation of what information is incorrect (**the issues**) and under 467(2) "an ARB must dismiss a complaint that was not made within the proper time or does not comply with section 460(7), therefore if an explanation or at least one issue is not provided on the compliant form the complaint should be dismissed by the CARB.

Standard of Compliance

The difficult question then is what standard should be applied to determine whether or not a complainant has fulfilled their obligation under 460(7) of the Act and Schedule 1 section 5 of MRAC? In this regard the Alberta Court of Appeal decision in Boardwalk Reit LLP v City of Edmonton 2008 concerning dismissal of complaints is very helpful. This case relates to a MGA section 295(4) challenge wherein the complainant may be barred from proceeding to a merit hearing for reasons of failure to provide information requested by the assessor. In this case the MGB and the Court of Queen's Bench had applied a relatively strict and rigid test as to the compliance of the complainant in answering the information sought by the assessor resulting in decisions to dismiss the complaints filed by Boardwalk. The Alberta Court of Appeal, however, rejected the reasoning of the MGB and Court of Queen's Bench and found that the proper tests to be applied were ones of "reasonableness" and "substantial compliance". The Court found that this level of flexibility is warranted in circumstances respecting a level of compliance that taxpayer needs to meet relative to information demanded by the assessor. In this case the Court found the taxpayer need only to act reasonably not correctly and the taxpayer's information need only to be substantially complete, not entirely complete. The taxpayer need only to do a reasonable amount of work and provide information in their possession not create or go out and find information to satisfy their obligation.

The more rigid standard advocated by the Applicant apparently resulted in approximately two thirds of the 2010 complaints being considered to be non-compliant. This suggests to the CARB that the standard expected by the Applicant is not understood or evident to the majority of taxpayers. Many of the complaints may be represented by qualified tax agents but the standard of compliance must consider a wide range of abilities, knowledge and understanding among potential complainants. In other words the standard should be that which the average lay complainant will understand and be capable of successful compliance. The CARB finds that reasonableness and substantial compliance tests similar to the Boardwalk decision are appropriate in the context of assessment complaints made under the provisions of the MGA and MRAC.

Therefore respecting the application before the CARB we find that the taxpayer is required to provide information respecting what is complained about and why that complaint is being raised. If that information is generally contained within the complaint form, then it can be said that substantial compliance has been met. Where these particulars are not found to be present within the complaint form then the complaint should be found to be invalid and should be dismissed in accordance with MRAC section 2(2). The complainant in this case had attached a document to the complaint form that provides 4 issues with sufficient clarity along with supporting facts and case references. This information in the opinion of the CARB fully meets both the reasonableness and substantial compliance tests described above. Therefore the CARB finds that the complaints are in compliance with MRAC 2(1) and orders that the matters proceed to hearing.

Secondary Deficiencies Matters

The Applicant also argued that the requested assessed value to be shown in section 5 of schedule 1 must be exact and not subject to change. In this case both complaint forms show specific values and the CARB finds that this complies with what can be expected. The Respondent makes the observation in its attachment that the value is preliminary pending the additional information and analysis that will be done between the filing of the complaint and their disclosure 42 days before the hearing. The CARB believes that this seems entirely reasonable. The requested values on complaints are likely to be a complainant's estimated value based on fairly rudimentary analysis done to determine whether there is a reasonable basis for the complaint. This initial value may be later impacted as the complainant makes out their full case for disclosure under section 8 of MRAC and may again be impacted by the disclosures of the assessor. If such were to occur it should serve only to sharpen the issues in the hearing of the matters in dispute.

The Applicant argued that the value of factors used to determine the requested assessment must be known and shown in Section 5 and the complaint form schedule 1 must be entirely complete without allowance for partial completeness. This would include the questions respecting discussions between the complainant and the assessor. This level of detail it is argued would assist the Applicant to determine if meaningful dialogue could be pursued in an attempt to find resolution of the complaint. The subject complaint forms indicate that no discussions have occurred and reasons are also provided. While the CARB believes discussion between the parties is a good practice there is no obligation for the complainant to discuss the matters under complaint with the assessor and therefore there should be no reason to expect an explanation beyond what has been provided in this case.

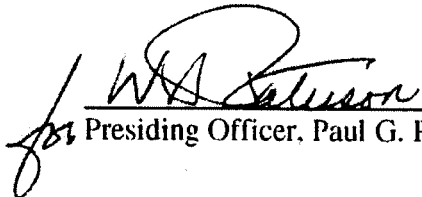
It is unclear as to what concern the Applicant may have respecting section 4 of schedule 1 as the first question has been responded to and the second question is not applicable as no request for information under sections 299 or 300 of the Act had been made at the time of filing the complaint. There is no obligation on a complainant to make a request for information under sections 299 or 300 of the Act or if this is done when it must be done. Therefore the CARB accepts the complainant's answer in this regard to be appropriate.

Decision and Direction

In view of all of the foregoing the CARB has decided that both of the subject complaints are in compliance with the Act and MRAC and therefore directs that the subject complaints precede to hearing as scheduled.

It is so ordered.

Dated at the Calgary ARB Offices, City of Calgary in the Province of Alberta, this 27 day of May, 2010.



for Presiding Officer, Paul G. Petry

Sent to:

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