

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the Property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Ducharme, McMillen & Associates, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Reimer, PRESIDING OFFICER

T. Usselman, MEMBER

D. Julien, MEMBER

These are complaints to the Calgary Assessment Review Board in respect of Property assessments prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBERS: 200118339 & 093163202

LOCATION ADDRESSES: 14417 68 ST SE & 2867 45 AVE SE

FILE NUMBERS: 57291 & 57306

ASSESSMENTS: \$ 14,120,000 & \$ 7,360,000

This complaint was heard on 5th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *David Porteous, Representing Ducharme, McMillen & Associates, Agent*

Appeared on behalf of the Respondent:

- *Denis Desjardins, Assessor*

Procedural or Jurisdictional Matters:

There was no objection to the composition of the Composite Assessment Review Board (CARB).

The Respondent requested that the complaints be dismissed based on a lack of compliance. The Respondent's position was that the Assessment Review Board Complaint Form("Form") had been improperly and incompletely filled out. In support of this request the Respondent submitted Calgary Assessment Review Board Decision ARB J0010/2010-P. This was a decision regarding a jurisdiction hearing held on May 26, 2010 between The City of Calgary and Ducharme, McMillen & Associates, appearing before Paul G. Petry. This decision will hereafter be referred to as "Petry". The Respondent provided no other argument or rationale for the requested dismissal.

The Complainant conceded that there had been a number of similar complaints filed by Ducharme, McMillen & Associates which had been dismissed by previous CARBs.

The CARB dismissed the appeal. In doing so, the CARB relied heavily on the Petry Decision as well as decision Number 0098 48/10, which is a decision of John Noonan regarding a jurisdiction dispute between the City of Edmonton and Ducharme, McMillen & Associates. This decision will hereafter be referred to as "Noonan".

Legislation:

The *Municipal Government Act*, R.S.A. 2000, c.M-26 ("*MGA*");

...

S.460(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

...

S.460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;
- (b) the name and mailing address of an assessed person or taxpayer;
- (c) an assessment;
- (d) an assessment class;
- (e) an assessment sub-class;

- (f) the type of property;
 - (g) the type of improvement;
 - (h) school support;
 - (i) whether the property is assessable;
 - (j) whether the property or business is exempt from taxation under Part 10.
- ...

S.460(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.

Matters Relating To Assessment Complaints Regulation 310/2009 ("MRAC")

S.2(1) If a complaint is to be heard by an assessment review board, the complainant must

- (a) complete and file with the clerk a complaint in the form set out in Schedule 1, and
 - (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.
- (2) If a complainant does not comply with subsection (1),
- (a) the complaint is invalid, and
 - (b) the assessment review board must dismiss the complaint.

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

Analysis:

The issues before this CARB are, in all material respects, identical to the issues which were before colleagues Petry and Noonan. They are, simply put, as follows: is the failure to indicate, in section 4 of the Form, those matters which are the subject of the complaint fatal to the complaint; is a requested assessed value of \$0.00 a legitimate request; and do the 17 reasons attached to the Form offer sufficient explanation as to the reason the Complainant believes the assessment is incorrect.

Petry further clarified these issues as follows:

"There are therefore three tests or components to a valid complaint.

1. **What** – Identification of what information (from those listed in 460(5) of the *Act*) [is] incorrect and therefore the subject(s) of the complaint
2. **Why** – Explanations as to why it is believed that this information is incorrect. These explanations will form the issues referred to in section (5) of Schedule 1 (The Form) and section (9) of *MRAC*.
3. **What is the correct information** – This must be the corrected assessed value if the matter relates to an assessment amount... "

The CARB will first deal with "what". The Complainant had failed to mark a box in section 4 of the Form. This section asks a complainant to identify the matters that apply to the complaint. Both Petry and Noonan dealt very briefly with the fact that no box was checked in section 4 of the Form. Petry wrote "this deficiency alone is not fatal as the fact that the complaint is about the assessed value can be gleaned from other responses within the complaint form...". Noonan wrote "As a history of CARB decisions has accumulated, municipalities have taken into account what Boards have decided to be non-fatal omissions in the completion of a complaint form, so here, for instance, the City did not dwell on the fact that no box was checked at section 4 of the *MRAC* Schedule 1 complaint form".

The CARB concurs that the failure to mark a box in section 4 need not, in itself, be fatal to the complaint. While *MGA* S.460(5) identifies those matters which may be subject to complaint, *MGA* S.460(7) does not stipulate that a Complainant must identify the matter(s) that the Complainant is complaining about. It does, however, defy logic that a Complainant would believe that they have reason to complain, but have no idea what matter it is that they are complaining about.

Of greater concern is the question of whether or not the Complainant has met the requirements of *MGA* S.460(7), which uses the imperative "must". The Complainant's attempt to comply with *MGA* S.460(7)(a) & (b), which coincides with Petry's "why", consisted of 17 reasons for complaint, which were identical for both complaints. They were also identical to 17 reasons contained in Noonan and 17 reasons attached to Petry.

The CARB concurs with both Petry and Noonan that the 17 reasons appear to be "boilerplate" and any relationship between the reasons and the subject properties is purely accidental. There does not appear to be any information relating specifically to the subject properties. The CARB understands that, at the time of filing, there is limited information available; however, it seems reasonable that the Complainant would have some idea as to what it is they are complaining about and why. The CARB finds that the Complainant has failed to meet the requirements of *MGA* S.460(7)(a) & (b).

MGA S.460(7)(c) & (d) would equate to Petry's "what is the correct information". At its most basic, the requirement would be to identify a reasonable estimate of the market value of the subject property. This estimate can change as more information becomes available, however, it should be a realistic attempt at a preliminary estimate of the requested value. The Complainant for both of these complaints, as was the case with both Petry and Noonan, entered a requested value of \$0.00.

Petry wrote "The arbitrary setting of the requested value at \$0.00 however seems to the CARB to be cavalier and frivolous without any attempt to determine an estimated value from facts that should have formed the basis for the complaint". Noonan noted that "While an atheist might find a legitimate role in a religious debate, a value denier will find cold reception at an assessment review board".

The CARB notes that it is a long way from the current assessments of \$14,120,000 and \$7,360,000 to \$0.00. The only scenario which the CARB can imagine could lead to such drastic reductions would be property which is contaminated to such an extent that the cost of remediation is equal to or greater than the value of the property once reclaimed. Interestingly enough, contamination is not included in the list of 17 reasons attached to the Form. The CARB finds that the Complainant has not made a sincere attempt to provide an estimated requested value and has failed to meet the requirements of MGA S.460(7)(c) & (d).

Board's Decision:

The CARB finds that the Complainant has failed to meet the requirements of MGA S.460(7) and has improperly and incompletely filled out Schedule One, Assessment Review Complaint Form. The complaint is dismissed pursuant to MRAC S.2.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF AUGUST 2010.



R. Reimer
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

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

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*