

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 -

Truman Development Corporation - 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 an assessment complaint filed by Truman Development Corporation (Respondent) with respect to the following roll number:

Roll Number - 172021206

BACKGROUND

An assessment complaint for the 2010 tax year was filed with the City of Calgary Assessment Review Board (ARB) on March 5, 2010 for the above noted property. The ARB scheduled a preliminary jurisdictional hearing at 1:30 PM May 12, 2010 to consider the City of Calgary's application to dismiss the subject complaint.

The primary issue is an alleged non compliance with respect to Section 5 of the complaint form (schedule 1 of MRAC). The Applicant argues that as the complaint is not in compliance with MRAC section 2(1) the complaint is invalid and the ARB must dismiss the complaint. The Respondent to the City of Calgary's application, Truman Development Corporation, did not appear for attendance at the hearing of this matter. As section 463 of the Municipal Government Act (Act) requires that the ARB proceed with the hearing so long as the parties have been notified. Therefore the ARB proceeded with the hearing on May 12, 2010.

ISSUE

Has the complainant 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 for 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 set out the specific issues and grounds have not been listed for their complaint issues. A requested assessed value is provided however, the only statement as to reasons is "property value assessed too high". This 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 complaint to be invalid under section 2(2) and to dismiss the complaint.

Respondent's Position

The complainant did not attend the hearing and did not file a written presentation as provided by MRAC section 16. The only documentation therefore was the evidence in form of the complaint form itself. Section 4 of the complaint form indicates the complaint is about the assessment amount but no answer is provided respecting whether information was requested under sections 299 and 300 of the MGA. Section 5 of the complaint form simply states "property value assessed too high". There are no further reasons or particulars provided. Also there are no responses to the section 5 a) and b) questions respecting discussions with the assessor.

Decision

Legislative Requirements

The CARB has provided a fairly detailed review of its interpretation and findings concerning the application of the Act and MRAC regarding compliance intended under MRAC 2(1) and (2) in its decision number ARB J0001/2010-P of May 27, 2010 *City of Calgary v Linnell Taylor Assessment Strategies*. The CARB recognizes the CARB decisions are not binding on other panels however in the subject case the issues are similar and therefore those reasons are applicable but will not be repeated in their entirety here. The following excerpt is adopted here:

"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 of the words matters, explain, reasons, issues or grounds. It appears to the CARB that MRAC section 9(1) is helpful and provides some clarity 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 complaint form the complaint should be dismissed by the CARB"

These findings are determined by the CARB to be applicable to the subject complaint.

Standard of Compliance

In determining the standard of compliance which should be applied to complaints under section 460(5) of the Act with particular reference to 460(7) of the Act and Schedule 1 of MRAC the CARB adopted the standard set out in a decision by the Alberta Court of Appeal Boardwalk v City of Edmonton. Again the CARB adopts the following excerpt from its earlier decision referred to above:

"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)."

In the subject case the complainant makes a simple statement that the property assessed value is too high. This would be self-evident without such a statement for two reasons. First the complaint is about an assessment amount and secondly the value requested is below the assessed value. Even if one were to accept that the assessed value is what is being complained about, which in the opinion of the CARB is not an "issue"; the complainant offers no explanation what so ever as to why that complaint is being raised. The CARB therefore finds that the complainant has not met the tests of reasonableness and substantial compliance respecting 460(7) of the Act or schedule 1 section 5 of MRAC. The other deficiencies are not as egregious as there are no obligations for the complainant to have discussions with the assessor or to request information under 299 or 300 of the Act, but nevertheless the lack of any response to these questions reflects on the possible lack of sincerity with which the complaint was completed.

Decision

In view of all of the foregoing the CARB has decided that the subject complaint is not valid and is not in compliance with the Act and MRAC 2(1). Therefore the complaint is dismissed in accordance with MRAC 2(2).

It is so ordered.

Dated at the Calgary ARB Offices, City of Calgary in the Province of Alberta, this 28th day of May, 2010.



Presiding Officer, Paul G. Petry

Sent to:

**Truman Development Corporation
#2236, 10 Aspen Stone Blvd SW
Calgary, AB T3H 0K3**

**Assessment Tribunal Unit #8002
The City of Calgary
P.O. Box 2100, Station M
Calgary, Alberta T2P 2M5**

**Minister of Municipal Affairs
Hon. Hector Goudreau
c/o MGB Office
15th Floor, Commerce Plaza
10155 - 102 ST
Edmonton, AB T5J 4L4**

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:**

NO.	ITEM
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| 1. | Exhibit 1A - City of Calgary Submissions |
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APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
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|------------------------------------|--|
| 1. Mr. S. Powell – City of Calgary | |
| 2. Ms. K. Hess – City of Calgary | |