

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the jurisdictional matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

***Berezan Management, COMPLAINANT
280, 815 – 8 Avenue SW
Calgary AB T2P 3P2***

and

The City of Calgary, RESPONDENT

before:

David Thomas, PRESIDING OFFICER

This is a decision of a single member panel of the Composite Assessment Review Board (CARB) of Calgary from a hearing held on May 10, 2010, to determine the validity of a complaint filed respecting:

1. Roll No: 067078899
Address: 735 – 8 Avenue SW, Calgary
Amount \$104,730,000
2. Roll No: 067080291
Address: 815 – 8 Avenue SW, Calgary
Amount: \$42,060,000
3. Roll No: 129178620
Address: 10577 Southport Road SW, Calgary
Amount: \$15,520,000

This complaint was heard on 10 day of May 2010 at the office of the Assessment Review Board located at 4 Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7.

Appeared on behalf of the Complainant:

- *Ralph Berezan*
- *Allison Gravelle*

Appeared on behalf of the Respondent:

- *Scott Powell, Assessor*

Issues:

The City asks that this complaint be dismissed. The complaint form is blank in Section 5, where the issues and grounds are to be set forth as required by the legislation and as stipulated in the instructions of the complaint form itself.

The City advises that the complainant did append a further sheet, but it only recited attempts to contact the assessor.

The City further advises that the complainant did write "market comps" in a blank reserved for a requested assessment value, but insists that that is of no assistance to the assessor and cannot amount to compliance as contemplated by the legislation.

The City acknowledges that subsequently the complainant did file a list of four market comparables, and concurs that if these comparables had accompanied the complaint form, objection to its validity likely would not have been made. However, this was after the deadline and there is no scope to extend it, even by this Board. The complaints must be dismissed.

The complainant states that Berezan Management had seven properties upon which they ended up filing complaints. Each property had a different assessor assigned, and as the appended sheet to the complaint showed, they had difficulty in contacting and discussing these matters with the assessors. Their notification of "market comps" is the language they use in describing where they would find fairness in their complaint, and the fact the assessor agrees with this language -- that it would have been satisfactory if they went in with the complaint -- shows it to be so.

The complainant alleges difficulty in getting to the assessor, but even more difficulty in producing the actual market comps until later. These properties were in the process of a major variation in rental renewals, so there was some uncertainty in usable comps at that time. They state they had not put in a value for the requested assessment, as they believed that value must come out of discussions with the assessor, or from this Board. In any event, what they requested was comparability to the market values.

Board Findings on Each Issue:

The complaints are deemed valid and may be set for hearing.

Board's Decision:

It takes an extrapolation very favourable to the complainant to find that the words "market comps" (even misplaced as they were) constitute a statement of an issue or the grounds by which it will be proved. One could conjecture that as the assessed value is under appeal, this means the assessed value does not meet the market value, and the means to establish this could be by the presentation of market comparables. This supposition is given some credence in the admission of the assessor: if the list of market comparables had accompanied the complaint, it would have sufficed.

The difficulty is how much is required to give meaning to the requirement of "information" set out

in 460(7), as well as to the words "issues" and "grounds" grafted on to "information" in the complaint form.

The provision of room for compliance with these requirements must certainly imply a cursory sketch (at best) of the issues to be taken to a hearing and of the means by which they shall be established.

It is only on the most favourable construction possible that it is here said the complainant has complied.

As to a requested assessment value, the Board notes that this form is intended to encompass two functions: stimulate or facilitate discussions between the parties and to determine what issues a complainant seeks to bring before a complaint panel. The presence of a requested value would assist in determining if a resolution without hearing were feasible. Beyond that, the import of this requested value has apparently no bearing on the complaint hearing. The Board is not directed to give any particular weight to this value in its determination of equity or fair market value. Accordingly, its absence cannot negate a right to complain. However, in the proper fact scenario, its absence may justify some sanction in costs, if it can be shown to have impeded the appeal process.

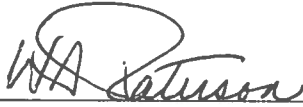
The Board notes the Court of Appeal of Alberta in the Boardwalk case wherein Justice Cote states:

[146] "Neither the assessor, nor the Municipal Government Board, nor the Court of Queen's Bench, mentioned the policy inherent in any penalty for failure to give information. This problem is common in courts, which have imposed discovery for centuries. Imprisonment or total loss of the lawsuit (striking out pleadings) are possible penalties. But in the last 130 years, they have been rare, even for complete failure to obey discovery orders. Why?"

[147] "Because such penalties are not an end in themselves, they are (at least initially) disproportionate to the gravity of the fault of the defaulter and to the degree of harm to the opposing party. The penalties are a means to an end: getting the discovery. The policy is the same in regulatory bodies."

In sum, in the context of the facts presented in this initial year of MRAC, this complaint is deemed valid. It is open to the panel hearing the complaint to determine if the absence of a requested assessment value warrants the imposition of costs.

MAILED FROM THE CITY OF CALGARY THIS 2 DAY OF June 2010.



for David Thomas
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.*