CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

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:

AEC International, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Gilmour, PRESIDING OFFICER

A preliminary hearing was convened on the 2nd day of July, 2010 at the office of the Assessment Review Board located at Floor number Four, 1212 – 31 Avenue, NE, Calgary, Alberta, Boardroom 1 with respect to the following roll numbers:

ROLL NUMBER: **201495462**

ROLL NUMBER: **201495470**

ROLL NUMBER: **201495447**

Appeared on behalf of the Complainant:

- *G. Merk*
- *A. Kiegler*

Appeared on behalf of the Respondent:

- *K. Hess*

LEGISLATION CONSIDERED:

Matters Relating to Assessment Complaints Regulation (MRAC) AR 310/2009

1. S. 8 (2):
   If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

   (a) the complainant must, at least 42 days before the hearing date,
   (i) disclose to the respondent ....,

2. S. 9 (2)
   A composite assessment review board must not hear any evidence that has not been disclosed in accordance with Section 8.

3. S. 10 (3)
   A time specified in Section 8 (2)(a),(b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

BACKGROUND:

On the evening of May 17, 2010, the Complainant had technical problems with his email in sending his evidence package to the City. There was no dispute amongst the parties that May 17 was the final date to exchange evidence between the Complainant and the Respondent (ie, 42 days).

At 11:49 PM, the Complainant sent an email to the City without any attachments, requesting an adjustment to the statement of issues. At 11:59 PM, the Complainant finally sent his evidence package to the Respondent, as disclosure documents for the three properties. The City received the email evidence package from the Complainant at 12:06 AM on May 18, 2010. There was no dispute from both parties with respect to the above times and dates.

On May 21, 2010, the Complainant received an email from the City of a letter of Non-filing of Complainant Evidence for roll numbers 201495462 and 201495470. The Complainant contacted the City of Calgary clerk who confirmed that the Complainant's email sent on 11:59 PM on May 17, 2010 had in fact not been read by the City staff until 08:06 AM on May 18, and therefore was deemed to be late.

On May 28, 2010, the Complainant received another letter of Non-Filing of Complainant Evidence by the City for roll number 201495447.

On June 2, 2010, the Complainant requested a jurisdictional hearing before the Board.

ISSUES:

1) Is the Complainant too late to file his evidence package to the Respondent, as per Section 8 (2)(a) of MRAC?

2) If the Board determines that the Complainant was too late to file his evidence, can the Board abridge the time of filing, pursuant to Section 10 (3) of MRAC?

COMPLAINANT'S POSITION:

The Complainant argued that he was encountering technical email problems in sending his evidence package to the City on the evening of May 17, 2010, the last day of disclosure under Section 8 (2)(a) of MRAC. By sending his evidence package by email to the City before the deadline of midnight May 17, 2010, the Complainant argued that he has complied with MRAC and disclosed his evidence package to the Respondent on time.

In the alternative, the Complainant took the position that this was the first time he has had such problems with respect to disclosure and thus is not repetitive behaviour. He also noted there was no mischievousness intended by his actions.

The Complainant also took the position that based on the response from the City, the evidence package from the Complainant could have been sent earlier on the evening of May 17, 2010, because the City deemed receipt of the disclosure only when they had read the email on the next working day.

The Complainant maintained that the City has suffered no prejudice by allowing the Complainant t o proceed by having the merits of his case to be heard and requested the Board rule that the Complainant had filed his evidence package to the City on time.

RESPONDENT'S POSITION:

Because the Complainant argued that the City was late in filing their argument for this hearing, the City elected to orally review for the Board the relevant legislative provisions of the Act and MRAC.

Pursuant to Section 8 (2)(a) of MRAC, the Respondent stated there is no discretion for the Board to alter the 42 day limit for the disclosure of evidence between the two parties.

The City also reinforced their position that under Section 10 (3) of MRAC, an abridgement of time for disclosure from the 42 days under Section 8 (2)(a) can only be reduced by the consent from both parties, which was not the case in this hearing.

The City also confirmed that the first time the City was aware that the Complainant had technical difficulties in forwarding his evidence to the City on May 17, 2010, was on June 23, 2010.

DECISION:

Issue # 1 – The Complainant, by sending his email package to the Respondent by 11:59 PM on the 17th of May 2010, complied with the disclosure time as prescribed in Section 8 (2)(a) of

MRAC.

Issue # 2 – Not required to be adjudicated.

REASONS FOR THE DECISION:

The City has taken the position that since the staff did not receive or read the evidence of the Complainant before midnight on May 17, 2010, the Complainant failed to comply with Section 8 (2)(a) of MRAC (42 day limit).

This position is reinforced by the City in their emails to the Complainant after the deadline concerning their "Non-Filing of Complaint Evidence" notice for the three roll numbers. In this correspondence it reads, "Be advised that no evidence was received by the City of Calgary Assessment Tribunal Unit as required." I suggest this particular stipulation is not addressed in Section 8 (2)(a) of MRAC. There appears to be no requirement in the legislation that the Respondent is "to receive" the evidence within the filing deadline time frame.

It was confirmed by both parties and not in dispute that the Complainant did file and disclose his evidence to the Respondent by email on 11:59 PM on May 17, 2010 thereby falling within the 42 day limitation period. The City takes the position that Section 8 (2)(a) was not complied with because the email did not arrive until after midnight on May 18, 2010, or until it was read by the City later the same morning. The Board disagrees with the City's interpretation of this section of MRAC relating to the filing of evidence by the Complainant.

There is nothing in the legislation which requires the Complainant to file by the end of the working day (ie, 4 PM). On the basis of relying on technology such as email, it is anticipated that a complainant could disclose his evidence to the respondent just prior to midnight on the 42 day due date. This is exactly the process the Complainant relied on for his filing of evidence on May 17, 2010.

I refer the parties to MGB Board Order 123/08. In this decision, reference was made to the Court of Queen's Bench decision in Gaspar Szenter that the purpose of ACAR (regulation which preceded MRAC) is not administrative efficiencies but rather "to provide access to the tribunal and procedures that accord with natural justice." The Court also stated that "Broadly speaking, the purpose of ACAR and the relevant provisions of the Municipal Government Act is to provide complainants with a hearing."

The Alberta Court of Appeal addressed principles of statutory interpretation in the case Boardwalk Reit LLP v. Edmonton (City), 2008 ABCA 220 at paragraph 78:

> "Where an Act can be construed more than one way, courts must reject any alternative which is manifestly absurd, or extremely harsh, unjust, or capricious... The harsher the result of one interpretation, the stronger the presumption against it."

In paragraphs 149, 151 and 152 of the same case, the Court of Appeal found that "allowing irrevocable unilateral assessments with no recourse to any tribunal is the largest possible penalty in a taxation statute." Further, the Court stated that "an automatic rigid bar to appeal from any gap in any answer would be an "absurd" interpretation of the Act", and would leave the taxpayer at the assessor's mercy.

In addition, as stated at paragraph 178 of the Court of Appeal's decision:

> "Besides, economy or efficiency does not trump everything in administrative law. Simple fairness entitles a citizen to speak to a government decision maker before that entity abrogates all of his or her rights".

It is fair to assume that the Courts would come to the same conclusion with the new regulations. It is reasonable to assume that MRAC has the same purpose which is not to take away someone's rights to have his case heard because it was received by the Respondent seven minutes after the deadline time of 42 days. The City did not dispute the fact that the Complainant had sent his evidence before midnight on the 17th of May, 2010. The position taken by the City, in their interpretation of Section 8 (2)(a) of MRAC seems to be that the Respondent must receive or read the evidence before midnight at the termination of the 42 day period. I find nothing in the legislation which reflects this interpretation of this section of MRAC.

The Board is of the opinion that the Complainant has complied with Section 8 (2)(a) of MRAC in the disclosure of his evidence to the Respondent and grants the appeal requested by the Complainant for a merit hearing to be convened by the Board.

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

J. Gilmour
Presiding Officer

JG/mc

Cc: Owners

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.