Calgary Assessment Review Board

PRELIMINARY DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

768950 Alberta Ltd., COMPLAINANT
(as represented by Altus Group)

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER
J. Lam, BOARD MEMBER
J. Massey, BOARD MEMBER

This is a decision regarding a preliminary issue raised related to a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	**200956910**
LOCATION ADDRESS:	**4607 Pacific Rd NE**
FILE NUMBER:	**75082**
ASSESSMENT:	**$1,790,000**

This preliminary issue was heard on 16th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *M. Robinson, Altus Group*
- *D. Mewha, Altus Group*

Appeared on behalf of the Respondent:

- *N. Domenie, Assessor*

Procedural or Jurisdictional Matters:

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

Preliminary Issue:

[2] At the commencement of the hearing, the Respondent raised a preliminary issue regarding the disclosure of the Complainant. The initial disclosure provided on May 5 2014 (the filing deadline for this hearing) via email to the City had the wrong disclosure package attached (disclosure was for another property). The disclosure for the subject property was subsequently provided via email on May 28, which is substantially after the May 5, 2014 filing deadline. The Respondent argued that according to Section 8 of Matters Related to Assessment Complaints Regulation (MRAC), the correct disclosure was late (less than 42 days prior to the hearing date of June 16, 2014) and therefore the disclosure provided on May 25 must not be heard by the Board, in accordance with Section 9(2) of MRAC.

[3] The Complainant stated that the email dated and sent on May 5, 2014 had the wrong disclosure package attached due to human error. Because Altus was in the process of moving to a new office, the normal checks were not in place and this error was not discovered before the email was sent. Apparently during a telephone conversation between a member of the Altus staff and a City assessor on the afternoon of May 27, Altus learned of this mistake. The Complainant immediately followed up, and provided the correct disclosure via an email on the morning of May 28, 2014.

[4] The May 5, 2014 email referenced the subject roll number (200956910) and the Complainant received a delivery response on that same day. The Complainant was not aware of the error until May 27, 2014. The Complainant stated that the May 5, 2014 email sent in accordance with the disclosure requirements indicated their intention to comply.

[5] The Complainant addressed the matter as soon as they became aware of the error, sending the correct disclosure package on the morning of May 28, 2014. The Complainant argued that there was some responsibility on the City to inform the Complainant of such an error, when the City becomes aware of the error.

[6] The Complainant argued that moving offices was an "exceptional circumstance" in that it was a massive intrusion to their normal business activities, and is not done regularly. That said, the Complainant requested that the Board grant an expansion of time as discussed in Section 10(2) of MRAC, and proposed August 8 2014 as an appropriate date to have the hearing on merit.

[7] The Complainant in argument presented the Nexen Inc. V City of Calgary, 2009 AMGBO 078-09 and subsequent Decisions that set out the test that the Board may use to determine if it should grant a postponement or extension of time. The Complainant argued that the subject situation meets the test set out, and that an expansion of time is warranted. The Complainant also presented the Boardwalk REIT LLP v Edmonton (City) [2008] ABCA 220 decision and argued that denying a taxpayer the right to have a complaint heard is a harsh penalty and should not be done simply due to an honest clerical error.

[8] The Respondent stated that it was not prepared to agree to an expansion of time, as requested (Section 10(1), and asked the Board to proceed on the basis of the original filing. If that occurred, the Respondent stated that they would take the position that the Complainant did not meet onus (demonstrate why the City's 2014 assessment for the subject property was in correct or unfair).

[9] The Respondent asked that the Board consider the impact on the City related to additional time and effort to prepare for a rescheduled hearing. The Respondent is in front of the Board on this, the scheduled hearing date and is prepared to proceed. The Board's decision in this preliminary issue must be fair to both sides.

[10] In reply to the position of the Complainant, the Respondent stated that moving offices was not an exceptional circumstance, in their opinion, as this was a process entirely under the control of the Complainant. An exceptional circumstance is one that is outside the control of the party. The Respondent argued that this circumstance did not meet the test for a postponement in accordance with Section 15 of MRAC.

Findings of the Board:

[11] The Board notes that under Section 9(2) of MRAC, it is not to hear any evidence not disclosed in accordance with Section 8 of MRAC. To proceed with the hearing without evidence from the Complainant, as requested by the Respondent, would not allow the taxpayer the opportunity to have the merit of their complaint properly heard. Proceeding with the hearing without the Complainant's evidence essentially results in the complaint being dismissed because the Complainant did not meet onus (nothing in the original disclosure showing that the subject assessment was incorrect or not equitable). Therefore, not accepting the evidence is akin to dismissing the complaint.

[12] Section 15 of MRAC states that an assessment review board may not grant a postponement or adjournment of a hearing except in exceptional circumstances as determined by the assessment review board. The Board understands this to mean that postponement or rescheduling of a hearing is to be done only for a very valid reason and is not something routinely done by the Board.

[13] The Decisions in Boardwalk REIT LLP v. Edmonton (City) 2008 ABCA 220 and Anterra Sunridge Power Centre Ltd. V. Calgary (City) 2014 ABQB 223 both address situations similar to that before the Board. Both decisions temper the interpretation of Section 15 by recognizing that denying a taxpayer the right to an appeal is a serious consequence (a harsh penalty) and must not be done without good reason. The application of procedural rules as a reason to deny an appeal is not the intention of the procedural rules. These decisions also address the need for fairness to both parties. Based on the direction of these two court decisions, the Board finds that the Complainant intended to disclose its evidence in accordance with Section 8 of MRAC, but due to a clerical error, the wrong file was attached to the email sent for the subject roll number.

[14] In previous decisions, the Board has developed criteria with which to consider if discretion should be exercised when considering a postponement or rescheduling of a hearing. These are summarized in Nexen Inc. V. City of Calgary, 2009 AMGBO 078-09, as well as other Board decisions. The four criteria were derived for situations involving late filing, but can be applied to this situation as follows:

a) Did the Complainant take immediate action to correct the problem? The evidence before the Board is that the Complainant, upon being made aware of the error, sent the correct information to the Respondent the following morning.
b) Did the Complainant display mischievous behavior related to the subject events? The evidence before the Board is that the Complainant intended to meet the disclosure requirement, but due to a error, attached the wrong file to the email.
c) Is this a repetitive behavior of the Complainant? This situation is the only such event that the Board is aware of. The Complainant explained that their normal process has checks to ensure proper disclosure occurs, but that due to the disruption caused by moving offices, this check was temporarily not in place.
d) Would the mis-filing of the disclosure result in the Respondent being confronted with surprise arguments or being unaware of the case to respond to? In this

case, the hearing, if rescheduled, would allow for adequate time for the Respondent to respond to the Complainant's disclosure, allowing at least the time indicated in Section 8 of MRAC.

[15] The Board finds that the Complainant intended to comply with the disclosure requirement in Section 8 of MRAC, and thought they did so. The attachment of the wrong disclosure package appears to be a simple error that occurred during a disruption to the Complainant's normal office procedures. Denying the tax payer the right to appeal the assessment would be a harsh penalty due simply to a clerical error. The Respondent did not demonstrate how postponement or rescheduling the hearing would adversely affect them, or why it would be unfair or prejudicial to their position. Therefore, the Board concludes that rescheduling the hearing is appropriate.

[16] Coming to this conclusion should not be interpreted as the Board condoning or rewarding sloppy work. Errors happen and some reasonable allowance for human or technological error is required. But, if errors begin to appear regularly, regardless of the reasons given, then the Board may take a less accommodating position. The Board also notes that it has the authority under Section 52 of MRAC to award costs against the Complainant, which may be appropriate if errors begin to appear more frequently. Such a remedy would preserve the tax payer's right to be heard, but would also send a strong message to the Complainant that they need to be more conscientious and careful when filing complaints.

[17] The Complainant argued that the City has some responsibility to inform Complainants if their disclosure is not properly filed, in error or incomplete. The Board finds that there is no such requirement in the Act or Regulations. The responsibility is on the Complainant to properly file a complaint in accordance with the Regulations. The City has its own activities related to this process that it is responsible for, including also following regulated processes. The Board puts no weight on this argument in its decision.

Board's Decision:

[18] The Board considered the evidence, its authority and direction provided by the courts in similar situations and concludes that the subject complaint will be rescheduled to the morning of August 5, in Boardroom 4 of the Calgary Assessment Review Board Offices. The deadline for the disclosure of the City's response is July 22, 2014 and the deadline for the disclosure of the Complainant's rebuttal is July 29, 2014. These dates are consistent with the windows provided in Section 8 of MRAC.

DATED AT THE CITY OF CALGARY THIS 24th **DAY OF** June **2014.**

Ivan Weleschuk

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Rebuttal (preliminary issue)
2. R1	Respondent Disclosure (only portions related to preliminary issue)

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.

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Preliminary	Disclosure	Wrong disclosure attached to email	Rescheduling of hearing