ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
1 SIR WINSTON CHURCHILL SQUARE
EDMONTON, ALBERTA T5J 2R7
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NOTICE OF DECISION NO. 0098 48/10

DUCHARME, McMILLAN & ASSOCIATES, INC.
1520 727 7 AVENUE S.W.
CALGARY AB T2P 0Z5

THE CITY OF EDMONTON
ASSESSMENT AND TAXATION BRANCH
600 CHANCERY HALL
3 SIR WINSTON CHURCHILL SQUARE
EDMONTON, AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on June 25, 2010 respecting complaints on the following 2010 Annual New Realty Assessments:

Roll Number	Municipal Address	Legal Description	Assessed Value ($)
1072503	5910 17 St. NW	NE 18-52-23-4	6,228,500
3043742	10305 80 Ave. NW	Plan 8520056 Lot 6	1,890,000
10136474	12420 17 St. NE	Plan 0827687 Block 1 Lot 1	5,615,500
4084802	17720 100 Ave. NW	Plan 8922431 Block 12 Lot 8	2,281,000
9980965	10918 184 St. NW	Plan 0021894 Lot 1	8,418,000
4033593	9908 170 St. NW	Plan 8822018 Block 42 Lot 1	9,736,500
4207163	494 Riverbend Square NW	Plan 9420407 Block 101 Lot 36	1,239,000
1263003	14920 87 Ave. NW	Plan 4337KS Block 1 Lot A	3,701,000
1105865	12465 153 St. NW	Plan 1738KS Block A Lot 13	4,115,000
3088259	14720 123 Ave. NW	Plan 4936MC Block 5 Lots 18, 18A	1,626,000
3148202	10502 111 Ave. NW	Plan 7540AH Block 5 Lot 295	522,500
3054442	10520 111 Ave. NW	Plan 7540AH Block 5 Lots 297, etc.	1,911,000
3860517	10375 51 Ave. NW	Plan 9223412 Block 1 Lot 9	3,227,000
4037867	3940 Gateway Blvd. NW	Plan 8821667 Block 32 Lot 1	9,725,000
9996863	15333 153 Ave. NW	Plan 0224318 Block 52 Lot 1C	1,492,000
1170422	7016 99 St. NW	Plan 8220888 Block 11 Lot B	5,764,500
6372882	13029 97 St. NW	Plan 4542KS Block 34 Lot D	7,107,500
6372809	13015 97 St. NW	Plan 4542KS Block 34 Lot D	2,057,500
9956962	9630 165 Ave. NW	Plan 9823025 Block 111 Lot 4	1,530,000
8886434	6006 87A St. NW	Plan 7821657 Block 12 Lot 8	2,613,500
8637043	7945 Coronet Rd. NW	Plan 3131KS Block 1 Lot 11	4,305,500
9995170	12425 66 St. NW	Plan 0221247 Block 5 Lot 4	24,285,500
3907797	5360 23 Ave. NW	Plan 9322232 Block 8 Lot 8	1,919,500
10032659	12311 17 St. NE	Plan 0520897 Block 1 Lot 1A	7,840,500
9951106	4405 101 Ave. NW	Plan 9724258 Block 6	42,295,500

and respecting a complaint on the 2010 Annual Revised Realty Assessment for the following:

Roll Number	Municipal Address	Legal Description	Assessed Value ($)
10053358	13020 127 Ave. NW		47,177

Before:

John Noonan, Presiding Officer

Board Officer:

J. Halicki

Persons Appearing: Complainant

Brian Dell,
Attorney
Wilson Laycraft Barristers & Solicitors

Matthew Pierson,
Associate Tax Consultant
Ducharme McMillen & Associates

Persons Appearing: Applicant

Cameron Ashmore,
Attorney, City of Edmonton Law Branch

Bonnie Lantz,
Supervisor Industrial Assessment
City of Edmonton Assessment & Taxation Branch

PART A: BACKGROUND

Parts of the *Municipal Government Act* dealing with property assessment and the assessment complaint process were revised, and the new provisions came into force January 1, 2010. As well, the *Assessment Complaints and Appeals Regulation*, AR 238/00 (*ACAR*) was replaced by a new and larger regulation, the *Matters Relating to Assessment Complaints Regulation*, AR 310/09 (*MRAC*). *MRAC* introduced a standard Complaint form at Schedule 1 for use province-wide.

The property assessment complaint/appeal process has been streamlined to a single ARB hearing with the right to appeal to Court of Queen's Bench on matters of law or jurisdiction. The deadline for filing a complaint was expanded to 60 from 30 days, as were timelines for disclosure of evidence prior to a hearing. Sections 299 and 300 of the Act were expanded, regarding an assessed person's right to receive "sufficient information" to show how assessments were prepared. The Complaint form is a thorough document requiring the identification of matters under complaint (the same as identified at s 460(5) of the *Act*) and detailing information the complainant must supply, again as identified at s 460(7), but further requiring "identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues".

Ducharme, McMillen & Associates as agent, the Complainant, filed assessment complaints for the 26 properties identified above, which include vacant land parcels, retail, fast food restaurants and shopping centres. The City of Edmonton applied to the Composite Assessment Review Board (CARB) for a preliminary jurisdictional hearing in respect of these complaints, seeking their dismissal by reason of non-compliance with the requirements of s 460(7) of the *Act*. Although Ducharme, McMillen is officially the Respondent in this hearing, opposing the City's application for dismissal, the panel has chosen to refer to this agent as the Complainant, presenting evidence and argument in favour of complainants' rights. The Applicant City of Edmonton shall be "City" or Applicant. Due to some uneven editing in the Petry decision,

referred to below, the City of Calgary was variously the Applicant or the Complainant, arguing against the complaints, and the Respondent Ducharme, McMillen argued for complainants. Those appellations might present no difficulties to other readers but this panel, prone to easy confusion, has chosen nomenclature reflecting more typical positions and viewpoints.

In filling out the *MRAC* Schedule 1 complaint forms the Complainant neglected to checkmark any of the boxes at Section 4. At Section 5 in the box for "Requested assessed value" the Complainant entered $0.00 and attached a list identifying 17 grounds for complaint. The list was identical for each of the 25 properties in the first table above, but was trimmed to 11 grounds for the revised assessment of the property in the second table. It was determined that the income approach had not been employed in the development of that assessment of a rail spur property and so the grounds were narrowed.

For efficiency, the CARB heard evidence and argument under one master roll, 1072503, although the decision applies to all rolls.

The Section 5 attachment to the complaint forms is duplicated as follows:

A. The Assessed Value is Incorrect – See Complaint Form for Requested Value
Grounds

1. The assessed value is not reflective of the income potential of the subject property, and therefore the subject is assessed in excess of market value.
2. The assessed value does not correctly reflect the highest and best use of the subject property.
3. The assessed value does not correctly reflect the current use of the subject property.
4. The comparable sales for the subject in the relevant time frame, suggest that the assessed value is in excess of market value.
5. The allowances from Potential Gross Income for the property are insufficient in determining the appropriate Net Operating Income for the subject property.
6. The capitalization rate used in the preparation of the assessment does not reflect the risk factor and return requirements necessary for the property to transact within the market place between a willing buyer and a willing seller at the most probable price.
7. The assessment of similar or competing properties suggests that the assessment is inequitable with these and other properties.
8. The assessment of superior properties suggests that the assessment is inequitable with these and other properties.
9. The subject's assessment was not prepared in accordance with the Municipal Government Act.
10. The physical condition and attributes of the property has [sic] not been properly reflected in the subject's assessed value.
11. The economic condition of the property has not been properly reflected in the subject's assessed value.
12. The location and orientation of the property has not been properly reflected in the subject's assessed value.
13. The input factors used by the assessor in preparing the assessment are erroneous.
14. The modeling process utilized by the City of Calgary [sic] failed to achieve the valuation standards.

15. The purchase price of the subject property is an indicator of market value and is not reflected in the assessed value.
16. Changes to conditions in the investment market have not been properly reflected in the assessment model and therefore the assessed value of the subject property.
17. Changes to conditions in the leasing market have not been properly reflected in the assessment model and therefore the assessed value of the subject property.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. During the course of the hearing, the parties raised the following jurisdictional and procedural issues, which are addressed below.

- **Preliminary issue 1**: Adjournment request

Counsel for the Complainant advised the CARB that the substantial issues in play at this preliminary hearing were identical to those decided by another CARB in the City of Calgary that involved the same agent: Ducharme, McMillen & Associates. Applications had been filed for leave to appeal to Court of Queen's Bench and for judicial review of that decision ("the Petry decision"). Pending the outcome of these applications, this preliminary hearing should be adjourned as the same issues and similar evidence would surface.

The Applicant urged that the hearing proceed. Both parties were in general agreement that the court process would likely consume considerable time, probably extending well into next year.

LEGISLATION

Section 15(1) of the ***Matters Relating to Assessment Complaints Regulation*, Alberta Regulation 310/2009** (*MRAC*), states:

(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment as the case may be.

(3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement of adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

The CARB decided the preliminary hearing would proceed. The *Municipal Government Act* at s 468 expects the complaint process to conclude prior to the end of the taxation year. As well, *MRAC* s 15 prohibits postponement or adjournment except in undefined "exceptional circumstances", and even then requires the ARB to re-schedule the hearing. If a determinative court decision were expected in a few short weeks, the CARB might well decide a short adjournment appropriate in the interests of efficiency. At this time, with CARB decisions being rendered on a number of jurisdictional issues as a result of new legislation coming into force, appealing a decision to the courts is not an exceptional circumstance.

- **Preliminary issue 2**: Are the City submissions, main evidence and rebuttal, in violation of *MRAC* s 39 where a summary of testimonial evidence and written argument is required?

LEGISLATION

***Matters Relating To Assessment Complaints Regulation* 310/2009**

39(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a one-member composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) the complainant must, at least 7 days before the hearing date,

(i) disclose to the respondent and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

(ii) provide to the respondent and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(b) the respondent must, at least 7 days before the hearing date,

(i) disclose to the complainant and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and

(ii) provide to the complainant and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence.

[CARB Note: At an earlier procedural hearing regarding these rolls, the parties had agreed to a more traditional evidence disclosure timeline than the simultaneous disclosure called for at s 39 for a one-member CARB preliminary hearing. Regardless of evidence disclosure timing which may vary between LARB, CARB, and one-member panels, the regulation employs the same wording throughout in respect of documentary evidence, summary of testimonial evidence, signed witness report and written argument.]

The Complainant submitted there was no summary of testimonial evidence or written argument in regard to the Applicant's rebuttal package and the main evidence package; to accept the Applicant's evidence would be a demonstration of preferential treatment or institutional bias in favour of the Applicant. It was further noted that while the Applicant had provided no detail, no argument, and so insufficient compliance with *MRAC* s 39(2)(a), this behavior betrayed a double standard given their view and treatment of the subject complaint forms.

The Applicant countered that there was no written argument, merely attention to be drawn to the documentary evidence submitted. The Applicant's witness statement indicated as much, as well as the intention to rebut/respond to the Complainant's evidence.

The CARB decided that any evidence to be heard from the Applicant's witness was likely to be commentary on the documentary evidence and not controversial. Accordingly, the CARB decided the hearing would proceed with the benefit of all the evidence disclosed. The Applicant's witness statement was vague in comparison to the statement from the Complainant's witness, but the Board's decision to continue was subsequently proven correct in that the witness' evidence was straightforward; more challenging were the legal arguments and case law interpretation advanced by the parties.

- **Jurisdictional Issue 3**: Should the subject complaints be found invalid and dismissed?

LEGISLATION

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

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(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.

S.467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

The *Matters Relating to Assessment Complaints Regulation ("MRAC"),* Alberta Regulation 310/2009;

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.

S.2(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.

POSITION OF THE APPLICANT

From the request for the preliminary hearing:

> The Complaint Form is insufficient, non-compliant with *MGA* s 460 and *MRAC*, as it fails to identify any matters in section 4, requests 0 value but does not claim to be non-

assessable as per s 298, lists 17 generic reasons for appeal and does not identify any specific reasons for appeal for the property under complaint.

The Applicant reviewed the language of the *Act* and regulation relevant to assessment complaints, cited the mandatory nature of "must" where employed in legislation, and discussed a fundamental principle of administrative law, the right to be heard, which right cannot be effectively exercised without knowledge of the matters in issue, the case to be met. Several decisions pertaining to issues and grounds and their sufficiency were introduced. The Petry decision at the Calgary Assessment Review Board showed in the appendix the complaint forms and attachments that were the subjects in that case, and it was noted that the Edmonton complaints were filed in an identical fashion, with no response at Section 4 of the form, a requested assessed value of $0.00 at Section 5, and the same list of seventeen grounds as an attachment including point 14: The modeling process utilized by the City of Calgary failed to achieve the valuation standards.

Other decisions of the Municipal Government Board (MGB 123/08 and 136/08) were submitted, both dealing with Issue Statement problems when *ACAR* 238/00 was in force. These decisions made extensive reference to two important court cases that have addressed taxpayers' rights and duties, as well as the obligations of assessment review panels: *Calgary (City) v Gaspar Szenter Holdings et al*, ABQB No. 0701-04629 and *Boardwalk REIT v Edmonton (City)*, 2008 ABCA 220. Although dismissal of a complaint is a harsh penalty, in certain circumstances such is required and so it is here. If the subject complaint forms are accepted as filed, they are no more than notice, and this was surely not the intent of the legislation.

POSITION OF THE COMPLAINANT

The Complainant's witness, Mr. Pierson, advised the Board that the filling out of complaint forms was a collaborative effort of office administration at Ducharme, McMillen. He had not been personally involved in this effort and candidly admitted that the complaints were filed without particular reference to the subject properties, except the benefit of having the assessment notice, or at least the assessed value. If a subject had been previously represented by the firm, details such as size would be known, and comparison to neighbouring properties could be made. From the will say statement: "There is insufficient time between the issuance of assessment notices and the complaint deadline, with the gathering of notices and receiving instructions from clients along with the organization and completion of client authorization forms, to generate a comprehensive analysis of the property in issue sufficient to come up with a finite value as to a requested assessment….Time limitations do not allow for an in depth analysis as would be filed with the later disclosure of evidence, and it is necessary to cover off as many potential issues as possible in filing the complaint. In the circumstances the request for a zero value, the lowest value that a Board could grant, is appropriate so as not to limit the taxpayer's right to argue the quantum of the appeal." Mr. Pierson elaborated that the compilation of reasons for complaint was a collaborative effort with Colliers, which firm does some sub-contract work for the Complainant in determining if property is assessed incorrectly. If the Complainant was unsure of the method chosen to determine an assessment, it was appropriate to look after a client's interest by covering all bases with the 17 listed grounds.

Counsel urged the Board to keep in mind two global propositions: the fundamental right of complaint, and the right to a fair hearing, access to which should not be denied lightly.

Attention was drawn to *MRAC* s 8(2) governing a complainant's disclosure of evidence 42 days before a hearing date. That is the point in time the assessor is required to know the case to be met. At that time, parties can apply under MGA s 465 if production of anything further is required. For purposes of filing a complaint form, one needs to have a ground for complaint which could be as simple as "the assessment doesn't meet the market value standard". Then one needs facts, and as per the complaint form instructions on disclosure, these are due 42 days prior to hearing.

The wording of the regulation (*MRAC*) at s 9(1) prohibiting the hearing of any matter in support of an issue not identified on the form **invites** the expansion of grounds. An Assessment Notice delivers one blanket number, the assessment, but does not set out the methodology used to find that number. A taxpayer should be at liberty to challenge an assessment by any approach to value.

At the complaint stage what is being dealt with is the information on the Assessment Notice, not the details of the methodology employed in developing the assessment. The legislature permits a municipality to include on assessment notices any information considered appropriate, but the City has chosen not to provide the basis of how the assessment was arrived at, the methodology employed, the various input factors, characteristics or attributes of a property. If the City wanted a detailed complaint, then it would have been incumbent upon the City to provide its details of how the assessment was prepared on the assessment notice itself.

The striking of a taxpayer's complaint is analogous to the striking of pleadings in court proceedings, and gave the principles for striking as found in an Supreme Court of Canada case, *Fullowka v Whitford*, including: the pleading must be read generously; will only be struck if the flaws are plain, obvious and beyond doubt; a claim advance must be hopeless to be struck out; anything arguably relevant can be pled; and facts pled are taken to be true. If a fact is pled, there is no need to have any evidence of that fact. A person may rely on later discovery or cross examination to yield the facts. Also referenced was *Hunt v Carey Canada Inc*. and the *Interpretation Act*:

s 26(1) When a form is prescribed by or under an enactment, deviations from it not affecting the substance and not calculated to mislead do not invalidate the form used.

Prior to the new regulation, *ACAR* 238/00 was in force, and it mandated the requirements of the Issue Statement. Excerpts from MGB Board Orders were highlighted, including:

> The MGB accepts the argument of the Appellant that documents filed in support of the issue statement and the appeal form can be sufficient to allow a reasonable person to understand the case to be met and therefore, an issue statement [or] appeal form suffering from a technical irregularity could be in substantial compliance.
>
> MGB 123/03
>
> The overall scheme of ACAR contemplates that Issue Statements in conjunction with disclosure requirements will notify the Respondent of the case to be met. It is not fair to expect that an Issue Statement alone will contain the case to be met.
>
> MGB 013/05

"There is no prohibition against requesting any assessed value, so long as a value is requested if the matter relates to the value of a property. Whether the requested value be zero, $1 or 5% less than the assessed value, the question of value is ultimately the domain of the Board…Only once

the disclosure is in place and the evidence unfolds at a hearing can an informed decision be made about value." [para 70, Complainant's Submission].

DECISION

The complaints are dismissed as they do not meet the requirements of MGA s 460(7).

REASONS FOR THE DECISION

In reaching a decision, this panel found particular help and relevance in two cases, one from the Saskatchewan Court of Queen's Bench and the Petry decision from the Calgary Assessment Review Board.

Saskatchewan

The parties made passing reference to *Canadian Tire Corp. Ltd. v Regina (City) Board of Revision*, [2001] SKQB 496 [*Tire*] which this panel found intriguing due to the striking similarity to what the CARB was tasked to decide. In the leisure of reading and re-reading this decision, it was noted that it is also referenced as [2001] S.J. No. 666 which might be an innocuous Saskatchewan Judgment number, or perhaps is more significant when one remembers that S.J. also designates the Order of Jesuits. Containing as it does elements both heavenly and hellish, it is exquisitely indexed.

Tire was an assessment appeal case involving two properties but having ramifications for 297 cases covering much of the commercial and residential condominium property in Regina, all of the notices of appeal having been prepared by an agent who in each case presented:

"*a broad ranging list of all possible defects in the assessment without much, if any, specific reference to the property in question….The notices of appeal contained no specific rationale for the contention that the assessments were too high. Various reasons for their being too high are mentioned but those reasons are just a list of potential areas where an error might occur in any assessment and do not constitute facts material to this appeal… Material facts are those which a reasonable person would regard as justification for filing an appeal. They are such facts as would enable a board of revision to know in what particular the assessor had erred. They would not be required to include a determination of what the assessment would be in the absence of error but they must point unequivocally to what it is that the assessor has done incorrectly. …assertions…are being made without material variation in some 297 similar notices filed by the applicant…What is really in issue in this proceeding is the right of the agent to file generic notices of appeal based on little or no research or factual data leaving the explanation and disclosure of material facts to a later date, keeping open the option of abandoning, before or during the board of revision hearing, any of the grounds for which no support could be discovered*." [*Tire* paras 13- 22]. [Emphasis added.]

In the Saskatchewan regime, before proceeding to a hearing an appointed secretary (gatekeeper) decided if a notice of appeal (a complaint) met the requirements of *The Urban Municipality Act* s 251 (4):

A notice of appeal must reference a specific parcel of land or improvement, be in the prescribed form, and state all grounds on which the appeal is based, including:

(a) a description of the valuation or classification with respect to which an error is alleged to exist;
(b) the nature of any error alleged in the preparation or content of any entry on the assessment roll or notice of assessment;
(c) the specific grounds on which it is alleged that an error exists;
(d) in summary form, the material facts on which the appellant relies; and…

Where the gatekeeper was of the opinion that a complaint did not comply with s 251(4) a grace period not exceeding 14 days was allowed to perfect the complaint. The court case developed because "*In essence…the [agent] objected to the level of particularity required by the [gatekeeper] in the notices of appeal and on all the evidence filed I infer that it preferred to cling to its existing practice and formats rather than comply with what it perceived as unjustified demands by the [gatekeeper]*." [*Tire* para. 9].

The soon-to-be italicized Ducharme is the second coming of *Tire*. An obvious difference is the lack of mention of evidence disclosure, if any, under the scheme then in place in Saskatchewan. Counsel would argue that it is for the assessor to know (but when?) the material facts, issues, grounds, matters or particulars for complaint. And, where these particulars have led to an error in assessment, *MGA* s 460(7)(d) calls for a value determination or at least a request.

It is most interesting to note that the learned judge found the gatekeeper acted within his jurisdiction and acted correctly, and the evidence showed the assessment appeals should be dismissed. However, the appeals were not dismissed. The governing legislation had been recently, though not extensively amended and the precise impact of these amendments was apparently unclear to the agent. More importantly, had the judge dismissed, some 297 appellants would have been denied the opportunity to perfect their appeals and so a time extension for that purpose was ordered.

Here, the *MGA* was extensively amended and a new, lengthy regulation (*MRAC*) came into force. The allowance of a grace period for the perfection of a complaint is not a feature of the new legislation nor the old. Although the previous regulation *ACAR* 238/00 gave an assessment review board the ability to abridge or expand the time for filing the Issue Statement, whose features are now part of the complaint form, there was no mention of revision of a complaint form or Issue Statement once filed.

This panel concludes that but for the grace period that allowed the perfection of a deficient complaint, the *Tire* decision would have dismissed complaints advanced in each case on "*a broad ranging list of all possible defects in the assessment without much, if any, specific reference to the property in question*."

The Petry Decision – Calgary ARB J0010/2010-P

Colleague Petry dealt with five complaints having much the same argument and evidence as was presented here, but very early in the schedule of preliminary jurisdictional hearings that have arisen throughout the province as a result of new legislation. Certain aspects of his case may

have consumed greater attention or were absent here, but in all important respects, the two cases are identical. 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 parties presented their observations re the Petry decision. Mr. Dell for the Complainant took exception to the finding that the boilerplate grounds were only marginally compliant, likening that to a diagnosis of marginal pregnancy. As for the requested assessed value of $0.00, this was just as legitimate as a request for a 5% or 25% reduction. Mr. Ashmore for the Applicant ventured that Petry had really dismissed the complaints both for the offending $0.00 and the boilerplate. The City had no argument with the decision – it addressed the requirements of s 460(7), the mandatory nature of "must", a three-pronged test for finding a complaint valid, and then the tests of reasonableness and substantial compliance.

"Section 5 – Reason(s) for Complaint" on the Schedule 1 complaint form is the root of both the Petry hearing and this. That section sets out the obligations of a complainant, the same as at MGA s 460(7) but with an elaboration: [explain] "in what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues." [Emphasis added]. The Petry decision laid out in great detail the party positions and a thorough analysis of the new legislation, efforts this panel would not attempt to duplicate. Rather, a few highlights are noted.

- 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 specific reasons in the form of issues, grounds or the requested assessment. The Applicant argued 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.
- The Applicant argued that the [Complainant] wants to preserve any and all issues and then declare their real case at the 42 day point prior to the hearing. The Applicant does not believe this is what the legislators intended. The intent is clearly to require more specific information on the complaint form so that the reasons for the complaint are clear.
- The [Complainant] explained that at the time of filing a complaint the only information available to the agent is the assessment notice….cap rates and other assessment details are not in fact known to the agent early in the complaint process.
- The agent at this point has not gathered all the required data and completed their analysis…Therefore the $0.00 value is reasonable …There is no penalty for overreaching the quantum in dispute. This occurs routinely in civil cases without repercussion.
- …the Act does not say that a complaint is invalid without the detail expected by the Applicant, however if an issue is missed the matters supporting that issue cannot be heard.

* * * *

- The primary challenge, however, appears to stem from section 460(7)(b) wherein the requirement calls for the complainant to "explain in what respect that information is incorrect" and (d) identify the requested assessed value, if the complaint relates to an assessment." …It also must be kept in mind that the information being referred to in 460(7)(b) are not the details respecting the development of an assessment but rather the basic information which is shown on an assessment notice…

- …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 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 difficult question then is what standard should be applied to determine whether or not a Complainant has fulfilled their obligation their obligation under 460(7) of the *Act* and Schedule 1 sections 4 and 5of *MRAC*.
- The Alberta Court of Appeal…found that the proper tests to be applied were ones of "reasonableness" and "substantial compliance."
- Many of the complaints may be represented by qualified tax agents but the standard of compliance must [be] consistent and consider a wide range of abilities, knowledge and understanding among potential complainants. In other words the standard should be that which the average lay Complainant will understand and be capable of successful compliance. 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*.

****

The Petry decision went on to find the complaints technically met the requirement of s 460(7)(b) "explain in what respect that information is incorrect", but not the spirit and intent of this section. Narrowly, reasonableness and substantial compliance had been achieved. However, s 460(7)(d) "identify the requested assessed value…" had not been met, the third essential component of a valid complaint. The decision explained that a requested assessed value could change during the course of evidence collection or disclosure of Respondent's evidence, but should be an "estimated value based on rudimentary analysis done to determine whether there is a reasonable basis for the complaint….an estimated value from the facts that should have formed the basis for the complaint."

This panel agrees with the Petry decision in regard to non-compliance with *MGA* s 460(7)(d) for the subject complaints, but would go further in finding that the *Boardwalk* reasonableness test has not been met in respect of s 460(7)(b).

The entire scheme of assessment and the assessment complaint process is to determine an estimate of market value. Mr. Dell observed that in civil proceedings there is no restraint or penalty in seeking outrageous damages for a stubbed toe; a complainant should not be penalized for suggesting a low assessment. While an atheist might find a legitimate role in a religious debate, a value denier will find cold reception at an assessment review board. Although a requested assessed value is not carved in stone and may well change, it should at minimum reflect rudimentary analysis of the facts that formed the basis for complaint.

Which introduces the requirements of s 460(7)(b) and the elaboration at *MRAC* Schedule 1: [explain] *in what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues*. Mr. Dell observed that Schedule 1 made reference in

various places to matters, issues, grounds and facts without specifying exactly what was meant by these terms, and that one should not have to pick up a copy of Black's Law Dictionary along with a complaint form. This panel concurs and further observes that matters relating to issues and grounds have been parsed and dissected in numerous decisions of boards and courts to no discernible effect. While counsel and hopefully most panels of the ARB have no difficulty with these concepts, the same cannot be said of all complainants. Nevertheless, it is not unreasonable to assume that on reading Section 5 – Reason(s) for Complaint on Schedule 1, the average person would understand "What is it about your property that makes you think the assessment is too high?"

Some of the seventeen grounds answer that question or come very close. However, they do so by designed accident. What is missing is information specific to the property, which the agent candidly admitted they did not yet have owing to time constraints, or had not yet referred to when preparing the grounds, except perhaps in the most perfunctory manner. On the complaint form, the elaboration to s 460(7)(b) calls for "the grounds in support of these issues". That phrase ties the specific to the general in the reading of this panel. For instance, Ground # 1 frames an issue by asserting that the assessed value is not reflective of the income potential of the subject property. Had this been followed by a comment that the subject achieved below market rental rates due to the wrath of Khan, all would be well with the world. This panel is convinced, however, that there was no information known about the income potential of the subjects, nor whether that information was relevant to the preparation of the assessments of 25 out of 26 different properties.

There is no sin in advancing multiple issues, and previous CARB jurisdictional decisions have given liberal leeway to the crafting of same. Where this panel differs with Petry is in finding that reasonableness requires the anchoring of an issue to some particular aspect of a subject property. In *Boardwalk*, the court found that it was not reasonable to expect a taxpayer to produce or find information he did not have in response to a s 295 request. In challenging an assessment, one is expected to produce and find, and there are avenues to accomplish that.

This CARB is confident that the complaints must be dismissed for non-compliance with both ss 460(7)(d) and (b) for a practical consideration as well. It takes no great leap of faith or logic to conclude that if 17 boilerplate "grounds" were found acceptable, that list would soon accompany every assessment complaint filed in the province by an agent.

Dated this twenty-second day of July 2010 at the City of Edmonton, in the Province of Alberta.

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Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the *Municipal Government Act*, R.S.A. 2000, c.M-26.

CC: Municipal Government Board
City of Edmonton, Law Branch
City of Edmonton, Assessment & Taxation Branch
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Cargill Ltd.
LaFarge Canada Inc.
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