ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 603/10

Collin Wong
1016540 Alberta Ltd
9911 104 Street NW
Edmonton, AB T5K 0Z2

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 November 12, 2010, respecting an application for costs by Collin Wong, representing 1016540 Alberta Ltd. against the Respondent, the City of Edmonton. This costs application arises from a merit hearing held on August 30, 2010 respecting the following property:

Roll Number	**Municipal Address**	**Legal Description**
3143682	9911 104 Street NW	Plan: 8622917 Unit: 343
Assessed Value	**Assessment Type**	**Assessment Notice for**
$331,500	Annual New	2010

Before:

Hatem Naboulsi, Presiding Officer
George Zaharia, Board Member
Judy Shewchuk, Board Member

Board Officer: Karin Lauderdale

Persons Appearing: Applicant

Collin Wong

Persons Appearing: Respondent

John Ball, Assessment and Taxation Branch
Aleisha Bartier, Law Branch

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

PRELIMINARY MATTERS

There were no preliminary matters.

BACKGROUND

The Complainant filed an application for costs against the City of Edmonton with regards to a merit hearing conducted by a Composite Assessment Review Board (CARB) August 30, 2010. This merit hearing was preceded by a preliminary hearing to determine if the complaint should proceed to a merit hearing due to the complaint form not being sufficiently completed as mandated by MGA s.460(7) that states: "*A complaint must (a) indicate what information on an assessment notice or tax notice is incorrect, (b) explain in what respect the information is incorrect, (c) indicate what the right information is, and (d) identify the requested assessed value, if the complaint relates to an assessment."* If the complaint form is not sufficiently completed, the consequences are outlined in MGA s.467(2) that states: "*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)*". However, as a result of the preliminary hearing the complaint did proceed to a merit hearing where the assessment was reduced by 5%, resulting in a lower assessment upon which the tax would be calculated, and that the $300 complaint fee was returned to the Complainant.

The basis for this costs application is that "The City misled the taxpayer about the information used to determine the assessment of the subject property" (Exhibit C-2, page 1).

LEGISLATION

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

S.468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

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

S.52(1) Any party to a hearing before a composite review board or the Municipal Government Board may make an application to the composite assessment review board or the Municipal Government Board, as the case may be, at any time, but no later than the 30 days after the conclusion of the hearing, for an award of costs in an amount set out in Schedule 3 that are directly and primarily related to matters contained in the complaint and the preparation of the party's submission.

S.52(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board may consider the following:

- *(a) whether there was an abuse of the complaint process;*
- *(b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process.*

Schedule 3

Table of Costs

Where the conduct of the offending party warrants it, a composite assessment review board or the Municipal Government Board may award costs up to the amounts specified in the appropriate column in Part 1.

Where a composite assessment review board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.

	Assessed Value			
Category	**Up to and including $5 million**	**Over $5 million up to and including $15 million**	**Over $15 million up to and including $50 million**	**Over $50 million**
Part 1 — Action committed by a party				
Disclosure of irrelevant evidence that has resulted in a delay of the hearing process.	$500	$1000	$2000	$5000
A party attempts to present new issues not identified on the complaint form or evidence in support of those issues.	$500	$1000	$2000	$5000
A party attempts to introduce evidence that was not disclosed within the prescribed timelines.	$500	$1000	$2000	$5000
A party causes unreasonable delays or postponements.	$500	$1000	$2000	$5000
At the request of a party, a board expands the time period for disclosure of evidence that results in prejudice to the other party.	$500	$1000	$2000	$5000
Part 2 — Merit Hearing				
Preparation for hearing	$1000	$4000	$8000	$10 000
For first 1/2 day of hearing or portion thereof.	$1000	$1500	$1750	$2000
For each additional 1/2 day of hearing.	$500	$750	$875	$1000
Second counsel fee for each 1/2 day or portion thereof (when allowed by a board).	$250	$500	$750	$1000
Part 3 — Procedural Applications				
Contested hearings before a one-member board (for first 1/2 day or portion thereof).(i.e. request for adjournment)	$1000	$1500	$1750	$2000
Contested hearings before a one-member board (for each additional 1/2 day or portion thereof).	$500	$750	$875	$1000

POSITION OF THE APPLICANT

1. In a letter dated September 29, 2010 and marked as Exhibit C-1, the Complainant outlined his grounds for the cost application. The essence of his position is as follows:

i. The City misled the taxpayer about the information used to determine the assessment of the subject property relying on a statement made on the pamphlet that was sent out with the assessment notices that read, "New for 2010, data specific to your property including income or significant variables, and sales used in determining your assessment can be accessed on our website at https://assessmentinfo.edmonton.ca using your Password (which can be found on the front of your assessment notice)."

ii. It was not until the merit hearing that the City stated for the first time that it did not use the data provided in the website in assessing the subject property.

iii. Had the taxpayer been aware of this, he would not have relied exclusively on the data, or in retrospect may have not proceeded with the complaint, or taken a different approach.

2. In a letter dated October 14, 2010 and marked as Exhibit C-2, the Complainant referenced s.52 and Schedules 1 and 3 of MRAC upon which his costs application would rely. Section 52 addresses the right of either party to make an application for costs within a specific period of time, and in reaching a decision, the CARB must determine if there was any abuse of process, and what unnecessary expenses were incurred by the party applying for costs as a result of the abuse of process. Schedule 1 is the "Complaint Form" while Schedule 3 sets out categories, in the ranges of property values, and the corresponding maximum costs that can be awarded.

3. Based on Schedule 3 of MRAC, the Complainant stated that the Board has discretion as to the amount of costs awarded, and stated that he would leave the decision in the "good hands of the Board". He argued that when a party is successful in a court of law, costs are awarded. Upon questioning by the Board, the Complainant for the first time stated that he was seeking costs in the amount of $300 as compensation for the grievance he suffered related to the merit hearing held August 30, 2010.

POSITION OF THE RESPONDENT

1. Based on the Complainant highlighting Disclosure Rules (Exhibit C-1, page 8), the Respondent was unclear if the Complainant was suggesting that the Respondent had failed to comply with disclosure rules, and that this had constituted an abuse of process, or that he had incurred additional or unnecessary expenses as a result.

2. The Respondent informed the Board that upon recognizing the Complainant's issue as being the valuation of the subject property, a brief was prepared that included sales of comparable properties.

3. The resulting disclosure package had been submitted to the Complainant on August 16, 2010, the date stipulated in the Notice of Merit Hearing, and in accordance with s.4(2)(b) of MRAC which reads, "*the respondent must, at least 7 days before the hearing date, (i) disclose to the complainant and the local assessment review board the documentary evidence, a summary of the testimonial evidence, including any signed witness reports, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond or rebut the evidence at the hearing, and (ii) provide……* The Respondent stated that it did not rely on any other information than that disclosed to the Complainant as outlined in the regulations. As well, the

Complainant had the opportunity to rebut the Respondent's disclosure evidence, but did not.

4. The Respondent's position is that it complied with all legislated disclosure requirements and that if the Complainant chose to rely on the website information only instead of the Respondent's disclosure, "he did so at his own peril".

5. The Respondent also stated that the Complainant highlighted a section from the pamphlet entitled "Access to assessment information" (Exhibit C-2, page 3). The Respondent advised that all property owners were sent this pamphlet along with the "Annual Realty Notice For 2010" that had been mailed out January 2010. The website information that was referenced on the pamphlet was provided as a courtesy only to the property owners, and included subject property detailed information along with a list of Title Transfers that occurred between July 1, 2008 and June 30, 2009. At the bottom of each page, there appears the following disclaimer:

> *The information is collected for property assessment interpretation purposes only. While the City of Edmonton provides this information in good faith, it does not warrant, covenant, or guarantee the completeness and accuracy of the information. The City does not assume responsibility nor accept any liability arising from the use other than assessment interpretation. The information is maintained on a regular basis and reflects the contents of the Assessment per the stated date/time of this document. This information is propriety and may not be reproduced without consent from The City of Edmonton.*

   The Respondent went on to argue that there is nothing in the material made available to the Complainant that stated that the information includes all sales that may be used in defending an assessment.

6. The Respondent stated that a property owner has the right to seek further information as to how the assessment of his property is determined pursuant to MGA s.299(1) that states: "*An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property."* In addition, the Respondent also referenced another section of the MGA that addresses assessments of other properties pursuant to MGA s.300(1) that states, "*An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality."* The

   Respondent stated that there was no evidence that the Complainant had made such a request.

7. The Respondent stated that the Complainant failed to clearly identify on what grounds the application for costs is being made, the category of costs that he is relying upon, and the costs that he is seeking. Given the difficulty that the Respondent had in responding to the allegations, the Respondent is seeking costs in the amount of $500 pursuant to Part 3 of Schedule 3 of MRAC.

DECISION

The decision of the Board is to dismiss the application for costs submitted by the Complainant, and award costs in the amount of $500 to the Respondent as requested by the Respondent at the hearing.

REASONS FOR THE DECISION

1. The Complainant did not direct the Board to any legislation or regulation that clearly demonstrated that the Respondent had failed to comply with any legislated requirements.

2. The Respondent, however, directed the Board to MRAC s.4(2)(b) that mandates the Respondent's disclosure obligations, and the Board is satisfied that these obligations were met. (The Respondent referenced MRAC S.4(2)(b) that applies to Hearings before a Local Assessment Review Board and should have referenced MRAC s.8(2)(b) that applies to a hearing before a Composite Assessment Review Board. Although the intent is the same, the Respondent's disclosure requirements pursuant to MRAC s.8(2)(b) is fourteen days which the Respondent met by delivering its Disclosure to the Complainant fourteen days before the merit hearing. Consequently, the Respondent's error in referencing the appropriate section did not result in a contravention of what is mandated by regulation.)

3. The Respondent also directed the Board to MGA s.299 and s.300 that offers the property owner the right to obtain further information related to the assessment of his/her property or even summary information of other properties. The Complainant provided no evidence that this right was exercised.

4. The Complainant did not provide any evidence as to what expenses may have been incurred due to the actions of the Respondent. He relied instead on allegations that the City had made misrepresentations, and that when the disclosure package was received from the City, the sales comparables used were not those included in the Private Data Package Request that he received as a result of a February 12, 2010 inquiry that he had made to the City's website.

5. The Board accepted the Respondent's explanation that, although the website information listing "Title Transfers" was limited to the twelve-month period immediately preceding the valuation date of July 1, 2009, the City is not limited to this period of time and will

   use comparable information from a period greater than the twelve-month period stipulated on the data package received by the Complainant from his inquiry to the city website.

6. The Board did not accept the Complainant's argument that the Respondent had made "misrepresentations" in preparing the pamphlet that had been mailed to all property owners along with the Annual Realty Notice For 2010. The Board, however did accept the Respondent's statement that the City, for the first time, made information available to the property owners that may be of assistance in challenging the correctness of the assessments.

7. It was clear from the document the Complainant received as a result of a request made to the city website referred to on the pamphlet, that the Respondent only provided the information in good faith, and that as per the disclaimer, the Respondent did not "guarantee the completeness and accuracy of the information". This should have been ample reason for the Complainant not to rely on the information obtained from the website in supporting his complaint about the assessed value of his property.

8. The Board is very sensitive to a citizen's right to have his complaint against the municipality heard in a fair and unbiased manner. The Board is convinced that this has happened. Not only was the Complainant's complaint heard at a merit hearing held August 30, 2010 that dealt with the issue of whether the assessment was fair and equitable, but the Board hearing that complaint reduced the assessment by 5%, resulting in a lower assessment upon which the tax would be calculated, and that the $300 complaint fee was returned to the Complainant.

9. With regards to the cost application submitted by the Respondent at the conclusion of the cost hearing, the Board finds that the Respondent met all legislated disclosure requirements, and that the legislation provided the Complainant the opportunity to submit rebuttal evidence in preparation for the merit hearing that was held August 30, 2010.

10. The Board agrees with the Respondent that the Complainant had further opportunities to obtain information pursuant to MGA sections 299 and 300 to assist in making his case that the assessment was incorrect. It is understood that the onus is on the Complainant to prove that the assessment of his property is incorrect, and that it is not the responsibility of the Respondent to help the Complainant in making his case.

11. The Board agrees with the Respondent that the ambiguity of the Complainant's position would have made it very difficult to prepare a defense. There was no evidence as to 1) what statutory requirements were not met, 2) what costs were incurred due to the actions of the City, 3) under what category of MRAC Schedule 3 the Complainant was basing his request, and 4) the amount of costs being sought.

12. Although the Board is not convinced that the Respondent's request for costs made under Part 3 – Procedural Applications is correct since it speaks to "Contested hearings before a one-member board (for first 1/2 day or portion thereof)", and this cost hearing was before a three-member board, the Respondent's intent is understood. It would behove the

    legislators to amend the legislation to recognize that procedural matters can also be heard by a three-member board.

13. The Board accepts the Respondent's position that the website information provided by the City is done so in good faith and is not guaranteed for its completeness and accuracy. Should the Respondent find itself constantly challenged on this information, and in fact would have to pay costs because of applications made by property owners, the unfortunate consequence could be that the Respondent would stop providing this information, thereby denying property owners of a tool that could be used in challenging the assessment of a property.

14. In awarding costs to the Respondent, the Board was persuaded by the second sentence at the commencement of MRAC Schedule 3, Table of Costs that states: *"Where a*

composite assessment review board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed." In this case, the Board is persuaded that due to a lack of specificity as to the reasons for the costs application, what costs might have been incurred by the Complainant as a result of the actions of the Respondent, and what costs the Complainant was seeking, the application did not have a reasonable chance of success.

DISSENTING DECISION AND REASONS

There was no dissenting decision.

Dated this 29th day of November, 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.