City of Medicine Hat
Composite Assessment Review Board
Decision With Reasons

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

between:

South Park Apartments Ltd. Represented by Colliers International,COMPLAINANT

and

The City Of Medicine Hat, RESPONDENT

before:

P. Petry, PRESIDING OFFICER
W. Ziegler, BOARD MEMBER
R. Traichel, BOARD MEMBER

This is a complaint to the City of Medicine Hat Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Medicine Hat and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER	ADDRESS	ASSESSMENT AMOUNT
109952	**102 Sprague Way S.E.**	**$6,585,070.00**

This complaint was to be heard on the 28th day of August, 2012 at the City of Medicine Hat Council Chambers, 580 - 1st Street S.E..

Appeared on behalf of the Complainant:

- J. Havrilchak

Appeared on behalf of the Respondent:

- E. Dubeau, J, Allan and B. Osadchy

Property Description and Background

The subject property is improved with a 90 unit apartment complex consisting of 4 buildings constructed in 1981. There are 58 one bedroom units and 32 two bedroom units. The complex occupies 5.686 acres of land.

Preliminary Matters

At the outset of the hearing of this matter on August 28, 2012, the Respondent raised a preliminary issue concerning the timeliness of both the Complainant's disclosure and the Respondent's disclosure. The Respondent stated that based on the CARB's decisions respecting disclosure requirements for two other complaints the previous day, both parties are one day late in disclosing their materials. The CARB therefore is requested to make a similar decision respecting this case and declare both the Complainant's disclosure and the Respondent's disclosure as inadmissible for purposes of this hearing.

The CARB Chair then outlined the decision of the CARB respecting complaints on roll numbers 107233 and 103579 wherein certain disclosures were not allowed into evidence because they had not met the minimum disclosure time requirements set out in the Matters Relating To Assessment and Complainants Regulation (MRAC). The Chair made reference to MRAC section 8 (2) (a), (b) and (c) as well as the Interpretation Act section 22 (3)

MRAC 8 (2) (a) (b) and (c) provisions are as follows

"(a) the complainant must, at least 42 days before the hearing date,

(i) disclose to the complainant and the 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 composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

"(b) the respondent must, at least 14 days before the hearing date,

(i) disclose to the complainant and the 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 composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;

"(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the 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 rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing."

Section 22 (3) of the Interpretation Act sets out that the number of days must be "clear" days as follows:

"(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded."

The Complainant indicated that he did not have the referenced provisions in MRAC or the Interpretation Act and would like some time to consider these provisions. A copy of these references were provided to the Complainant and the proceedings recessed to allow time for the Complainant to review the time lines of the exchanges involved and the regulations pertaining to disclosure.

When the hearing was reconvened the Complainant indicated that he could understand the requirements of the regulations in this regard but argued that the penalty of disallowing its disclosure is unreasonable and overly harsh. If the CARB decides that the disclosures are late and that they are not admissible then the Complainant asked the CARB to consider a postponement to allow for correction of the matter or to allow for further submissions on the matter. Before recessing to consider the Respondent's motion further, the CARB advised the parties that they have an opportunity under MRAC section 10 (3) to abridge the requirements specified in MRAC section 8 (2) (a) (b) or (c) and if such an agreement were forthcoming the hearing could then proceed with their respective disclosures properly before the CARB.

The CARB then recessed to consider the disclosure matter with reference to section 8 (2) (a)(b) and (c) of MRAC and section 22 (3) of the Interpretation Act.

Upon reconvening the CARB asked the parties whether or not they were able to agree on an abridgement to allow their respective disclosures to be admitted into evidence before the CARB. The parties indicated that they were unable to reach such an agreement.

Decision and Reasons

The CARB concluded that both the Complainant's disclosure and the Respondent's disclosure were a full day short of meeting the requirements of the specified number of "clear" days. Section 22 (3) of the Interpretation Act provides that the counting of days in this circumstance must not include the day of disclosure or the day of the hearing. According to MRAC section 8 there must be 42 "clear" days between these two events for the Complainant's disclosure and 14 "clear" days between these events for the Respondent's disclosure.

In the event that disclosure does not occur in accordance with section 8 of MRAC the provision of section 9 (2) apply. This is a mandatory provision and the CARB must act accordingly.

MRAC section (9) (2) sets out the following:

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

The CARB therefore decided in accordance with section 9 (2) of MRAC that it could not allow either the Respondent's disclosure of August 14, 2012 nor the Complainant's disclosure of July 17, 2012 into evidence.

The CARB also considered the request of the Complainant's request for a postponement to allow for correction of the disclosure timing or for further submissions. Neither the Complainant or the Respondent brought forward any explanation for their late disclosures nor did they argue that there were exceptional circumstances as required by section 15 (1) of MRAC. The request for postponement was therefore denied.

Complainant Form

The CARB considered the Complaint form itself as to whether there may be something by way of detail or substance that may be compelling respecting a change to the assessment. The CARB found that the complaint form in and of itself does not provide sufficient and compelling evidence to justify a change in the assessment. The assessment is therefore confirmed at $6,585,070.00.

It is so ordered.

DATED AT THE CITY OF LETHBRIDGE THIS 8th DAY OF SEPTEMBER, 2012.

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Presiding Officer

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).

470(3) *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*

(α) the assessment review board, and

(β**)** *any other persons as the judge directs*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Residential	Multi-Residential	Apartment	Late Disclosure	Evidence Disallowed