

Edmonton Composite Assessment Review Board

Citation: Colliers International Realty Advisors Inc v The City of Edmonton, 2013 ECARB 01267

Assessment Roll Number: 10030323
Municipal Address: 11731 181 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Colliers International Realty Advisors Inc

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

PRELIMINARY MATTER DECISION OF

Dean Sanduga, Presiding Officer

Brian Frost, Board Member

Robert Kallir, Board Member

Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties did not object to the composition of the Board. The Board members stated they had no bias with regard to this file.

Preliminary Matters

[2] At the onset of the hearing, the Respondent advised that it had not received the Complainant's disclosure. The Respondent referred the Board to the *Matters Relating to Assessment Complaints* (MRAC) s 8(2)(a), which states: "the complainant must, at least 42 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence..." Further, the Respondent stated that under MRAC s 9 ((2) "A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8".

[3] Since no disclosure evidence had been received by the City, the Respondent requested that the Board disallow the disclosure evidence brought to the hearing by the Complainant.

Legislation

[4] The *Municipal Government Act*, RSA 2000, c M-26, reads:

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

[5] The *Matters Relating to Assessment Complaints Regulation*, AR 310/2009, reads:

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 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.

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

15(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 or 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.

Position of the Complainant

[6] It is the Complainant's position that the Complainant's disclosure was hand delivered to the Assessment Review Board, (ARB) and the City on July 23, 2013, as required under MRAC s (8). In support of the Complainant's position, evidence was entered as Exhibit C-1, page 10, a memo signed and amended by ARB staff which confirmed the file was delivered to the ARB on that date. The Complainant advised that a similar memo/receipt was obtained from the City however he was unable to locate a copy of that receipt. He noted however that the receipt was in the Respondent's evidence.

[7] The Complainant pointed out that there was a clerical error in preparation of the memo/receipt and that roll number 9943397 had incorrectly entered twice. The Complainant explained that the ARB staff noted the error with a hand written correction. This file number (10030323), as well as another, (10302174), were added when receipt was acknowledged.

[8] The Complainant provided date stamped copies of the cover sheets for the disclosures for both roll numbers 9943397 and 10030323 confirming that the ARB received the subject disclosure on the requisite date of July 23, 2013, (Exhibit C-1, pages 11 & 12).

[9] The Complainant stated that the same packages were delivered to both the ARB and the City on July 23, 2013 and that a clerical error on the cover sheet should not preclude evidence being heard given it was in fact delivered to the City as required under MRAC. The Complainant opined that the disclosure could very likely have been misplaced or discarded by the City because it was not referenced on the memo/receipt.

[10] The Complainant stated that in the Bramalea decision the right of the taxpayer is sacrosanct and that a clerical error should not preclude evidence being heard. The Complainant further added that as a courtesy, the City could well have telephoned the Complainant stating that the disclosure was missing and it could have been delivered immediately.

Position of the Respondent

[11] It is the Respondent's position that the Complainant's Disclosure was not received in accordance with the legislation, that it is the Complainant's responsibility to ensure that it is delivered in accordance with the legislation and that there has been no agreement to abridge. Therefore it is the Respondents position that the Complainant's disclosure should not be heard. In support of its position, the Respondent provided its Exhibit R-1, a copy of the memo/receipt with written notations, one of which noted that no evidence was received for the roll number 10030323.

[12] The Respondent confirmed that there were errors in the memo/receipt that were corrected when the package was delivered, (Exhibit R-1). The Respondent pointed out that those errors were noted as being a repeat of roll number 9943397 as well as receipt of another roll number 10302174. The Respondent further added that a notation that no evidence was received for roll number 10030323 was made and that it appeared that this notation was independent, and perhaps subsequent to the date of receipt of the package.

[13] The Respondent added that the reason that disclosure deadlines are firm as they are is to ensure that both parties have sufficient time to review the other's position and respond in a

manner that addresses the issues at hand. The Complainant's failure to deliver the disclosure placed the Respondent in a position of having to prepare a generic disclosure for return to the Complainant in order to meet the Respondents disclosure deadline.

Decision

[14] The Board's decision is that the merit hearing should proceed but that it be postponed to October 17, 2013 at 9:00 AM to permit the Respondent to prepare and deliver its disclosure in response to the Complainant's disclosure. The Complainant's disclosure was hand delivered to the Respondent at the close of this hearing.

[15] The new disclosure due dates are as follows:

Complainant's disclosure: September 4, 2013

Respondent's disclosure: October 2, 2013

Rebuttal: October 9, 2013

Reasons for the Decision

[16] The Board considered the evidence as presented by both parties.

[17] The Respondent has provided no factual evidence that the subject disclosure was not delivered on the disclosure date and that the Respondent has asked the Board to rely on hearsay evidence to make its decision.

[18] The Respondent was unable to confirm to the Board the timing for what would appear to be a supplemental notation on the memo/receipt, that being that the evidence for the subject roll number was not received.

[19] The Board in its decision is relying on the statement by the Complainant that similar packages were delivered to both the ARB and the City.

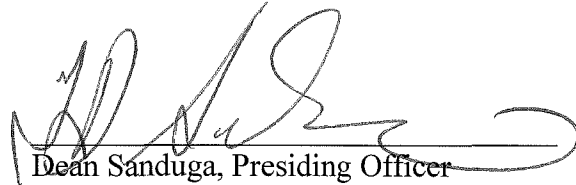
[20] The Board was satisfied that the ARB received the evidence for this file on the disclosure date.

[21] The Board was satisfied that a package was confirmed as received by the City, in the same form as that received by the ARB, and that it was delivered to the City on the disclosure date.

[22] The Board was satisfied that on the balance of probability the same package would have been delivered to the City and in the interest of fairness both parties should be afforded the opportunity to present its case.

Heard on September 4, 2013.

Dated this 6th day of September, 2013, at the City of Edmonton, Alberta.



Dean Sanduga, Presiding Officer

Appearances:

Stephen Cook
for the Complainant

Amy Cheuk
Joel Schmaus
Michael Johnson
for the Respondent

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, RSA 2000, c M-26.