

The City of Winnipeg then challenged the process whereby the Board had made the “stop the clock” orders in the Fall of 2003, arguing that the Board had no jurisdiction to make an order of this type.

The City sought and was granted leave to the Court of Appeal on the question of whether the Board had the power to make a “stop the clock” order.

In a decision released September 28, 2007, the Court of Appeal ruled that the Municipal Board did have the power to make the orders which it did, relying on provisions of both the Act, and The Municipal Board Act.

The standard of review applied was correctness and in the result the City’s appeal was dismissed.

Why the City allowed some ten 10 appeals decided earlier to go forward without challenge has never been explained.

SEEKING AN INCREASE OF AN ASSESSMENT AT AN MGB HEARING

Submitted by Jud Virtue, Macleod Dixon LLP, Calgary, AB

The statutory authority for the Alberta Municipal Government Board (“MGB”) to increase an assessment is found in the *Alberta Municipal Government Act*. Of particular note is section 467 (1)(b) which provides that “An assessment review board may...make a change with respect to any matter referred to in section 460(5).” Section 499 (1)(d) provides that the MGB may “make any decision that the assessment review board could have made ...” Section 460(5) speaks to the fact that an assessment is one of the matters which may be subject to a complaint.

Accordingly, the statute contemplates that an assessment review board or the MGB on appeal of a decision from the review board, can “change” an assessment.

These provisions have been considered by the Municipal Government Board in *FHR Real Estate Corporation (The Fairmont Jasper Park Lodge) as represented by Macleod Dixon LLP v. Municipality of Jasper* (Board Order MGB 051/05) and in *City of Edmonton v. Army & Navy Stores Ltd* (Board

Order MGB 112/02. These decisions emphasized that the MGB may exercise its jurisdiction to grant an increase in assessment, provided that the property owner has received notice and had an opportunity to make representations. In these decisions, it was held that proper notice would be provided under two circumstances: 1) where the request for an increase in the assessment was in issue at the assessment review board level; or 2) where the request for an increased assessment was put in issue before the MGB by way of a cross appeal.

The *FHR* and *Army & Navy* decisions were recently considered by the Alberta Court of Queen’s Bench in *Ag Pro Grain Management Services Ltd. v. Lacombe (County)* [2006], A.J. No. 585, where the Court agreed that the use of the word “change” in Section 467(1)(b) of the Act clearly authorized the MGB to either decrease or increase assessments. The Court stated:

“I agree with the Board that, given the administrative nature of the proceedings, the myriad factors which influence the market values upon which assessments rest, and the statutory obligation to ensure correctness, fairness and equity in assessments that the word “change” should not be interpreted in the narrow manner proposed by the applicants. The Act does not limit the authority of the ARB or the MGB to the lowering of assessments. The word “change” should be given its plain meaning, which would encompass both an increase or a decrease in an assessment.”

The Court concluded as follows:

The Board’s determination that it has the jurisdiction to increase an assessment on appeal was correct, subject to the condition that appropriate notice and a full opportunity to argue the issue is provided to the appellant.

The Court considered what procedural steps might be necessary to afford sufficient notice of an intention to seek an increased assessment. Importantly, the Court did not adopt the requirements of the *FHR* and *Army & Navy* decisions. Rather, even though no cross appeal had been filed by the Municipality and the issue of an increase was not before the assessment review board, the Court stated that it would have been appropriate for the MGB to hear the request

for an increase if it had adjourned the proceedings and afforded the opposing party an opportunity to submit evidence and properly respond to the request.

The *Ag Pro Grain* decision reaffirms the principal that a Municipality seeking an increase in an assessment, must not "spring" the request on an unsuspecting taxpayer, at the last minute. The decision also confirms that the jurisdiction of the MGB to grant an increase is dependent on the request being made in a fair and timely manner, such that the taxpayer has sufficient notice and a full opportunity to respond. However, the decision suggests that the request for an increase can be made, even though the issue was not before the assessment review board or placed before the MGB by cross appeal.

ONTARIO

UPDATE

*Submitted by J. Bradford Nixon,
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It has been a very active quarter for the Ontario Chapter of the CPTA. We have been involved in consultations with the Ministry of Finance regarding the proposed legislative amendments to the *Assessment Act* which include a four year reassessment cycle, and a four year phase-in of increases to residential properties. The primary thrust of the CPTA submission has been to request the elimination of the property tax capping and clawback system to be replaced by the same four year phase-in of assessment increases allowed for residential properties. This would include an automatic full tax reduction, if so merited, for commercial or industrial properties as will be permitted for the residential properties.

In addition, the Assessment Review Board ("ARB") is conducting stakeholder consultations regarding the recent licensing of paralegals and the impact that will have on the Rules of Practice and Procedure before the ARB. A critical question is the degree to which the ARB rules should be modified to reflect longstanding practice before the ARB, or whether compliance should be required with the spirit and intent of the regulation of paralegals by The Law Society and incorporated into the ARB rules.

On February 11th and 12th, the Ontario Chapter hosted the National Valuation and Legal Symposium at The Sutton Place Hotel in Toronto. The agenda was busy, interesting, and challenging. The accommodation and the food (and drink) was top notch. In addition to the Cross-Canada Legal Update, topics covered included presentations regarding property tax mitigation measures in the United States, the recent City of Vancouver consultations, and the increasing complexity of tax capping and clawbacks in Ontario. A panel on the valuation of contaminated/Brownfield properties received much applause, as did a round table discussion on property tax clauses in the context of landlord and tenant relations. Much thanks to the Ontario Chapter Executive.

Stay tuned for the 4th Annual Symposium in February of 2009.

Finally, the Ontario Chapter will be co-hosting a luncheon meeting in the City of Ottawa with the Buildings Owners and Managers Association (BOMA). The meeting will take place on April 15th. More news to follow!

EXCERPTED SYMPOSIUM PRESENTATION

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Notwithstanding the fact that under the *Assessment Act*, R.S.O. 1990 c. A 31, as amended, (the "Act") S. 40 there are three parties to an appeal, as a practical matter, in the assessment litigation process, there were historically two protagonists: the assessing authority and the taxpayer. The assessor was regarded as the objective implementator of tax policy, legislation and appraisal theory with the taxpayer designated as the challenger of the three components.

In the main, the municipalities played a passive role relying on the assessing authority to protect their interest. During the 1990's this process evolved with the advent of municipal participation, initially as a supporter of the assessing authority, but as time passed, as a co-occupant of the field historically occupied by the taxpayer – attacking and critiquing tax policy, appealing assessments as opposed to merely responding, proactive