

Property Tax Assessment - Appeal Process Changed

By Jan Goresht

Welcome to 2010. This year we will all get not only new assessments from the City of Calgary, as usual, but there is also new Provincial assessment legislation coming into effect.

Last summer the Provincial Legislature passed into law Bill 23, which is an Act amending the Municipal Government Act. Bill 23 changes the rules for assessment information disclosure and the appeal hearing process. It comes into effect January 1, 2010. The Bill is envisioned as a means of gaining efficiencies in the complaint system. The frustrations of the existing process are seen as:

- Appeals take too long
- There is duplication
- There are inconsistent decisions
- There is a lack of access to information for appellants from the municipalities
- There is a lack of disclosure by appellants
- There are inconsistent qualifications and training of ARB members
- There is a lack of accountability of all parties

Under the new legislation there will be only one level of appeal. For commercial and multi-residential properties (defined as residences with four or more residential units) appeals will be heard by a Composite Assessment Review Board (CARB). The CARB will be made up of two local members and a single Provincial member. The Provincial member will be the Chair. Residential appeals (three units or less) will be heard by a "Local Assessment Review Board" (LARB). The LARB will be made up of three local members. The only appeal from a decision of the LARB or the CARB will be to the Court of Queen's Bench on a point of law within 30 days of the decision. Decisions of the Boards **must** be issued in writing, no later than 30 days following the hearing, or no later than the end of tax year.

The existing process has been two tiered. There was a first level of appeal to an Assessment Review Board (ARB). The ARB was local and administered by the municipality. Decisions of the ARB could be appealed to the Municipal Government Board (MGB), an independent Provincial body. The only appeal from a decision of the MGB was to the Court of Queen's Bench on a point of law.

The time between the mailing of the assessment notices and the deadline to file a complaint has been extended from 30 days to 60 days. The filing of a complaint has become more regulated. The complaint **must** now identify:

- The property under complaint
- What information on the notice is incorrect
- Why the information is incorrect
- The specific issues related to the incorrect information that are to be determined by the Board
- What the correct information is
- The requested assessed value
- If the complainant is represented by an agent

The Boards are given mandatory direction to **not** hear complaints where full filing requirements are not met.

The fees to appeal will be set by the Province. The fees will be refunded when the decision favors the complainant or the complaint is withdrawn upon agreement with the assessor.

There are important disclosure dates that are also changing and that are different for each Board. They are:

	Existing	LARB	CARB
Complainant disclosure	21 days before hearing	21 days before hearing	42 days before hearing
Respondent disclosure	7 days before hearing	7 days before hearing	14 days before hearing
Complainant rebuttal	3 days before hearing	3 days before hearing	7 days before hearing

With there being only one hearing of the assessment appeal it will be critical for both parties to present a complete and thorough explanation of all available evidence and argument before the Board. There is only one chance to get it right.

When requested, the municipality must provide details of the assessment of the subject and 5 or fewer comparables within 15 days. In the new legislation there are stricter controls on the assessor as to what must be disclosed. The assessor **must** provide “the key factors, components and variables of the valuation model applied in preparing the assessment of the property” and “description, characteristics and condition of the property”.

The assessments will continue to be annual market valuations based on the condition of the property December 31, in the market midyear, of the year prior to the taxation year.

Bill 23 fundamentally changes the way in which assessment appeals will proceed in the Province starting in 2010. These rules raise concerns about fairness and impartiality of the hearing process. Alberta will be the only Province that has a single level of appeal that is not independent from the very municipality that prepares the assessment.

We are on the cusp of the New Year and the municipalities are scrambling to establish the CARB and LARB Boards. The Province has no Board member training in place. The logistics of arranging the Provincial CARB members for hearings remain undefined and there are not enough Provincial members to meet the expected demands. No one can meaningfully estimate at this point the average hearing time, or by extension the number of Boards it will take to hear the complaints in the City of Calgary (historically the jurisdiction with the most appeals in the Province). This first year under these new rules is going to be challenging, to say the least.

Keep an eye out for your 2010 City of Calgary assessment notice. The assessment notices are scheduled to be mailed on January 4, 2010.

Jan Goresht is the Associate Vice President at Cushman & Wakefield Ltd. He can be reached at (403) 261-1111

Editor's Note:

A Special Seminar has been scheduled for Wednesday, February 3, 2010 from 9:00 a.m. to 11:00 am at the Blackfoot Inn.

You get one chance to get it right! Learn what the changes are, how they impact you, and what you have to do to prepare. Find out what you need to do to “get it right”.