

Municipal Board Procedures

Presented to
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Municipal Board Procedures

Introduction

The Municipal Board is created pursuant to The Municipal Board Act (the “Act”).

A quasi-judicial tribunal.

A permanent chair Jeff Bereza and vice chair Diane Stasiuk and approximately 12 part-time members. Historically the vice chair has been a lawyer. A variety of backgrounds including former municipal politicians, municipal administrators, assessors, business people, and lawyers.

Typically sit as a panel of 3 members but occasionally will sit as 2 members.

Additionally support staff include the general secretary and a number of administrative staff.

The Municipal Board is given jurisdiction in a variety of matters relating to municipalities including the following:

- Property and business tax assessments primarily pursuant to the provisions of The Municipal Assessment Act.
- Matters relating to municipal finance pursuant to The Municipal Act.
- Matters relating to planning pursuant to the provisions of The Planning Act and The City of Winnipeg Charter.

Procedural Matters

The Board has adopted pursuant to section 24 (1) of the Act a set of rules governing hearings before the Board. Section 24 and following of the Act address the powers of the Board with respect to hearings and section 24 (4) grants to the Board the same powers that are provided to a judge of the Court of Queen’s Bench.

Board to have powers of Court of Queen’s Bench in certain matters

24(4)

The board, except as herein otherwise provided, as respects the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcement of its orders, the payment of costs, and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, has all such powers, rights, and privileges as are vested in the Court of Queen’s Bench or a judge thereof.

Additionally the Board is given the power to generally make rules, and in particular assessment appeal rules, pursuant to sections 24 (3) and 24 (3.1) of the Act.

The Board has also published on its website procedures with respect the following:

- Aggregate Quarry / Large Scale Livestock Operations Hearing
- Assessment Appeal Hearing
- Development Plan By-law Hearing
- Local Improvement or Special Services By-law Hearing
- Subdivision Hearing
- Zoning By-law Hearing

The rules and procedures address filing deadlines in respect of submissions, order of questioning and submissions, and statutory rights of appeal if any.

Orders

Section 46 of the Act gives the Board the power to make orders including the power to re-hear a matter and additionally the power to review, rescind, change, alter or vary any decision or order.

Review and Appeal Rights

A request for review and reconsideration is initiated by way of letter to the Board and may be addressed by way of written submissions and/or a further hearing.

Appeal rights with respect to assessment matters are created pursuant to The Municipal Assessment Act to the Court of Appeal by way of leave on a question of law or jurisdiction only (section 63).

The Act in section 60 more generally creates a right of appeal from any final order or decision of the Board to the Court of Appeal on a question of jurisdiction or point of law with leave to be applied for within one month.

Costs

The Board is given the power pursuant to section 58 of the Act to award costs.

The Assessment Rules address costs of adjournments.

The Board does occasionally award costs but it is relatively rare.

Assessment Matters

The jurisdiction with respect to assessment appeals is set forth in The Municipal Assessment Act, The City of Winnipeg Charter and The Municipal Act.

A two-step process to the Board of Revision of the assessing municipal government with a further right of appeal on liability (exemption) matters to the Court of Queen's Bench and on classification or value issues to the Board.

Board Hearings

With respect to assessment appeals typically the burden of proof is upon the assessor and ordinarily, except in limited circumstances, the assessor presents its case first.

Written submissions must be filed 21 days prior to the hearing in accordance with the assessment appeal rules. A right of rebuttal is given and must be filed 7 days prior to the hearing.

Typically the assessor presents its submission and is then subject to cross-examination by the property owner and questioning by the Board.

The owner will then present its case and will be subject to cross-examination by the assessor and questioning by the board.

Closing submissions or argument then follow.

Frequently the parties are assisted by lawyers or tax agents.

The evidence is rooted in appraisal theory and methodology and the participants typically have a strong knowledge base with respect to appraisal matters.

Preliminary Matters

The Board does have jurisdiction to address preliminary matters and has done so in the past. In the context of assessment appeals these may relate to disclosure of documents or information, removal of information from submissions which is not properly before the Board, or scheduling or other procedural issues.

Appeal Management at Municipal Board

A relatively recent development commenced in the spring of 2018 to address a significant backlog of appeals many of which dated back 9 years.

It is fundamentally a mandatory mediation process where members of the Board assist the parties in attempting to facilitate a resolution.

The Assessment Appeal rules-section 12-address.

A two-step process, appeal management:

- a form of triage to determine whether the matter should go;
- directly to a hearing;
- to settlement discussions between the parties without the assistance of the Board;
- or whether it should go to the case management or mediation process.

If directed to a hearing it then become subject to the hearing rules contained in the Assessment Appeal rules.

If directed to case management it then become subject to the case management procedures which include an obligation to file a submission 7 days before case management detailing the issues on the merits, any preliminary issues, legal positions, expected witnesses, and position of the parties on the issues in dispute.

Case management is a without prejudice and confidential process.

Depending on complexity typically a 1 hour first session, frequently leads to subsequent sessions.

Position of assessor is that they must always get settlements approved by management and typically leads to an adjournment to allow management approval absent which the process will resume, and if approved, a certificate of agreement is submitted and a further case management session does not occur.

Objective is to resolve, alternatively to narrow the issues, and then direct the matter to a hearing if necessary.

When the process began 3 years ago appeals dating back as far as the 2009 taxation year were dealt with, generally the Board is now beginning to deal with 2020 taxation year appeals.

The end result of a successful appeal management or case management process is the signing of a certificate of agreement which is reflected in an order of the Board concluding the appeal.

The Board will caucus with the parties separately, and will engage in multiple sessions over many months.

Bill 37

Amendments are proposed to The Planning Act and The City of Winnipeg Charter to create a further right of appeal to the Board from municipalities including Winnipeg in respect of planning issues.