

Herald 21st March 2008 Property owners have right to get information municipality holds Robert Martindale

The market value of a property is the base of the municipal tax edifice. If it is faulty, the rates are faulty. An owner may object to the value on the valuation roll, on various grounds, including that the municipal valuer was not in possession of all the relevant facts, or because irrelevant considerations were taken into account, or relevant considerations were not considered, or that the decision was arbitrary, or the procedure was unfair.

These are also grounds upon which the High Court may review the value on the valuation roll.

An owner will not be able to object on any of these grounds if he does not know whether the municipality has and has considered all of the information required to be filled in on the objection form, or whether there was any other information the municipality considered in connection with the property.

Owners are not entirely at the mercy of the municipality. They have rights in the Bill of Rights, and the municipality must respect these. The municipality must also exercise its powers, in terms of the Municipal Property Rates Act, entirely consistent with the Constitution. Two very important rights property owners should be aware of are their right to access information and their right to administrative justice.

These are given effect through the Promotion of Access to Information Act, and the Promotion of Administrative Justice Act. What this means for property owners is that if they follow the prescribed procedures, they may obtain access to the municipality's records in relation to the valuation of their property.

It also means the municipal valuer's decision must be lawful, reasonable and procedurally fair. The High Court has the power to review the municipality's decision regarding the market value of a particular property. Judicial review is one of the important checks against the abuse of power. Property owners also have a right to adequate written reasons for the value that appears on the valuation roll.

For an owner to be able to exercise fully his right to object, and for the objection procedure to be procedurally fair, the owner must be given, in sufficient time prior to the objection cut-off date, the facts and reasons for a value on the valuation roll.

This should not be a problem if the municipality's value was based on all the necessary facts. Wide-scale under-valuation and over-valuation of properties on the valuation roll will mean persons liable for rates are not treated equally, and it will defeat the purposes of the Act.

There may be some provisions in the Property Rates Act that are inconsistent with the Constitution, and accordingly, invalid. The provision that states that an objection must be in relation to a specific individual property and not against the valuation roll as such, may be unconstitutional.

If there is sufficient evidence that the vast majority of properties on the valuation roll are either undervalued or overvalued, as a result of the method of valuation, it is arguable that to exclude a class action objecting to the entire valuation roll is inconsistent with the Constitution.

Newspaper reports have suggested the whole valuation roll is faulty. Property owners should not sit back and just accept that every provision in the Act is constitutional.

If legal challenges mean that the municipality must extend the deadline for objections, and postpone the implementation of the Act, so be it. This delay is preferable to undermining the purpose of calculating rates on the market value of a property.

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