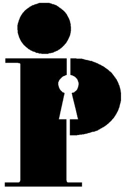

Reconsideration Order MO-2464-R

Appeal MA08-288

Order MO-2440

Municipal Property Assessment Corporation

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BACKGROUND:

This order addresses a request by the appellant that I reconsider Order MO-2440, in which I found that the Municipal Property Assessment Corporation (MPAC) had conducted a reasonable search for records responsive to the appellant's request. The appellant initially submitted a request to MPAC pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the assessment of valley lands and enumerated the following:

a) Who authorized City flood hazardous valley lands to be assessed in the million dollars?

b) The records in the methodology used in arriving in these figures.

c) Indication of how [wide]spread this policy is in Ontario and which municipalities high assessment applies to valley lands.

d) All information if this is MPAC sole policy or initiated by city or provincial governments.

e) Any recent directives by MPAC to correct high assessments.

The request was then clarified by MPAC with the appellant. The clarified request read as follows:

a) Any document or other form of record that approved MPAC's current valuation policy for valley or flood plain land in the City of Toronto or the Regional Municipality of Peel.

b) Any document or other form of record describing MPAC's valuation methodology for arriving at assessed values for valley or flood plain land in the City of Toronto or the regional municipality of Peel.

c) Any document or other form of record that approved MPAC's current valuation policy for valley or flood plain land in other areas of the Province of Ontario, other than the City of Toronto or the Regional Municipality of Peel.

d) Any document or other form of record sent to MPAC from the Province of Ontario, or any municipality, giving direction to MPAC respecting the determination of assessed values for valley or flood plain land in Ontario.

e) Any document or other form of record from MPAC management giving direction to MPAC staff relating to valuation policy or methodology for the determination of assessed values for valley or flood plain land in Ontario, including but not limited to such lands in the City of Toronto or the Regional Municipality of Peel.

MPAC issued a decision to the appellant, stating that it does not have records responsive to his clarified request. In its decision, it provided the following information regarding valuation (part (a) of the clarified request):

> We have asked MPAC's Property Values Department to conduct a search. They have advised that MPAC does not have any written documentation regarding the policy and procedures with respect to the valuation of flood plain lands.
>
> Conservation Authority lands, which are often designated as flood plain lands are initially valued similar to surrounding land. However, due to the restrictions placed on the development of the land, a value adjustment is made to all Conservation Authority properties across the Province (generally 50%). This adjustment would apply to the City of Toronto and the Regional Municipality of Peel. Further adjustments may be required on an individual property by property basis depending on the type of land and its use e.g., swamps wetlands and creek banks. If the flood plain land is located within the Conservation Authority lands, it would receive the adjustment for restricted use and if a further adjustment is warranted due to the nature of the specific land and available market date, then a further reduction might occur.
>
> In addition, flood plain lands outside the Conservation Authorities are valued according to real estate market data. Sales data is collected and the flood plain nature of the land is identified as restricted or non-restricted. The market evidence is analysed using Multiple Regression Analysis (MRA) to determine whether an adjustment is warranted in the estimated value for a specific property.

The appellant then appealed MPAC's decision. As mediation did not resolve the issues in this appeal, the file was transferred to adjudication in which an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry (NOI) to both MPAC and the appellant describing the appeal process for an oral inquiry where the issue to be determined is whether MPAC had conducted a reasonable search for responsive records. I also asked the parties to be prepared to address the appellant's position that the software development instructions/directives incorporated within the MPAC software, tables, reports, emails, etc. and the factual representational report, are records responsive to his request as clarified.

In the NOI, the appellant was also asked to be prepared to inform me of any details he was aware of concerning records which have not been located, or any other information to indicate that the search carried out by MPAC was not reasonable. MPAC was asked to be prepared to provide me at the oral inquiry with a summary of all steps taken in response to the appellant's request.

The oral inquiry was scheduled for April 21, 2009. In attendance on that date was the appellant, as well as the following MPAC staff: the Senior Manager of Multiple Regression Analysis, Property Values (Manager MRA), and the Senior Manager Legislation and Policy Support Services, Freedom of Information Coordinator (FOIC). Also available to testify on behalf of MPAC by telephone were two more individuals: MPAC's Residential Valuation Manager,

Property Values Department, Sudbury Field Office (Manager Residential Valuation) and the Manager, Land Analysis, Property Values Department, Barrie Field Office (Manager Land Analysis).

Prior to the oral inquiry, both the FOIC and the Manager Residential Valuation provided affidavits concerning the searches undertaken in response to the clarified request. The other two witnesses had been consulted by the Manager Residential Valuation in the preparation of his affidavit.

All four MPAC witnesses testified at the oral inquiry, as did the appellant concerning the existence of any additional responsive records. In addition, the Manager MRA testified concerning the existence of any responsive "software development instructions/directives incorporated within the MPAC software, tables, reports, emails, etc. and the factual representational report" as outlined in the cover letter to the oral Notice of Inquiry.

At the conclusion of the oral inquiry, the parties agreed that the only outstanding issue, based on the wording of the clarified request, was whether there existed any policies, methodologies and directives regarding the fine-tuning and review of the assessment of municipally-owned flood plain and valley lands in the Toronto or Halton-Peel regions. The parties agreed that MPAC would make inquiries of a Customer Service Manager in each of the Toronto and Halton-Peel Field Offices, who is responsible for fine-tuning and review of municipally-owned flood plain and valley lands, for any policies, methodologies and directives regarding this fine-tuning and review of municipally-owned flood plain and valley lands in those regions.

MPAC was to provide a response in affidavit form within 21 days of the oral inquiry from each of the Customer Service Representatives, with a copy to the appellant. The appellant was to provide his written representations regarding these affidavits within 21 days of delivery of MPAC's affidavits.

MPAC provided affidavits of its Customer Service Managers (CSMs) from its Toronto and Halton-Peel Field Offices, as agreed upon at the oral inquiry. In its cover letter, MPAC advised that certain types of property that may be municipally-owned and on valley and flood plain lands, for example municipal park lands, are reviewed and fine-tuned by MPAC's Property Values department, not MPAC's Customer Service department. MPAC reiterated that the Property Values department had already conducted a search for records responsive to the appellant's request at the time MPAC received the request. MPAC also enclosed with the affidavits and cover letter a copy of its Fine-Tuning 2008 Residential Current Value Assessment Guidelines, which guidelines were referred to at the oral inquiry.

The affidavits of the CSMs addressed the issue of whether there are any policies, methodologies or directives in their respective field offices regarding the review and fine-tuning of municipally owned valley or flood plain lands.

The appellant disagreed with MPAC's position that no responsive policies existed regarding the fine-tuning and review of municipally-owned flood plain and valley lands. In his representations, the appellant states that he:

> …believes from the facts, there is an orchestrated policy within MPAC to place high assessments on non-paying municipal lands to increase the overall Ontario total assessed values, for funding purposes…
>
> Contrary to MPAC, the evidence shows that none of the thousand plus municipal owned flood prone valley lands are assessed at market value but fraudulently are assessed a[s] developable tablelands…
>
> The affidavit[s] from manager …states that …fine tuning is done by MRA to arrive at an estimated value "of CERTAIN Property Types" and adjustments are made based on the VRS's [Valuation Review Specialists] appraisal judgment and knowledge of the local area.
>
> Note: Most valley flood lands MPAC estimates them on purpose, in the millions of dollars value and are estimated to build able table lands… All VRS Region [Toronto and Halton-Peel] could not be lock-in-step in implementing across the board ridiculous estimates.
>
> Re: …MPAC does not have a specific property code or other category for municipally -owned flood plain lands.
>
> Note: To confirm this, appellant requests access to the MRA data entry. The [CSM] …does not directly account, why municipal flood plains are acquired at a minimal values and his authority finds it normal to have such high unaccounted values…
>
> This alleged practice could not be individual VRS input but automatically incorporated into the MRA system... [The a]ppellant has been refused by his staff to see the tabulations done by his staff in arrival of such estimates. Their reasoning is that, the MRA program is off limits to the public.
>
> …There is no individual separate estimation of these lands as presented by [the CSMs.]
>
> …The appellant believes that there is a policy written or in the database of MPAC.

In Order MO-2440, I determined that MPAC had conducted a reasonable search in response to the remaining issue in this appeal which, based on the agreement of the parties at the oral inquiry, was whether there existed any policies, methodologies and directives regarding the fine

tuning and review of the assessment of municipally-owned flood plain and valley lands in the Toronto or Halton-Peel regions.

In my order, I considered the appellant's representation that he believes that individual assessments of municipally-owned flood prone valley lands are assessed, not at market value, but at an inflated amount as developable tablelands and that these inflated values are automatically incorporated into the MRA system, a province-wide statistical analysis computer technique used by an assessor to estimate values of properties

I determined that MRA records are not reasonably related to the appellant's request as clarified as the MRA system is not used by MPAC to fine-tune and review municipally-owned flood plain and valley lands in the Toronto and Halton-Peel Regions.

I found that MPAC had made a reasonable effort to identify and locate responsive records. Therefore, I found that MPAC had conducted a reasonable search as required by section 17 of the *Act* and I dismissed the appeal. The appellant has sought a reconsideration of Order MO-2440.

DISCUSSION:

THE RECONSIDERATION PROCESS

Section 18 of the IPC's Code of Procedure (the Code) sets out the grounds upon which the Commissioner's office may reconsider an order. Sections 18.01 and 18.02 of the Code state as follows:

> 18.01 The IPC may reconsider an order or other decision where it is established that there is:
>
> (a) a fundamental defect in the adjudication process;
>
> (b) some other jurisdictional defect in the decision; or
>
> (c) a clerical error, accidental error or omission or other similar error in the decision.
>
> 18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the **decision.**

GROUNDS FOR THE RECONSIDERATION REQUEST

Fundamental defect in the adjudication process

The appellant appears to be relying on section 18.01(a) of the Code as the basis for his seeking a reconsideration of Order MO-2240. In particular, he submits that I erred in accepting MPAC's evidence that no responsive records exist. He states:

> …MPAC had written records and was more likely to be in their computer data files. MPAC refused the applicant's FOI request because no written documentation existed. Written and verbal deputations were made to the adjudicator, the subject was overlooked, and the appellant takes issue why this was not considered.
>
> …The adjudicator erred that the appellant was responsible solely to provide evidence that written records do exist. She refused to acknowledge or question the defendants (MPAC staff), how is it possible that thousands of solely worthless municipal lands, could have assessed values in the millions of dollars, when hundreds of separate MPAC staff enter data. To which they systematically applied similar, consistent values, in other MPAC districts and offices. [She] accepted without question, that all these million assessed values were from fine tuning MPAC policy by the sole initiative by individual MPAC staff. Appellant spoke on this matter fully and the adjudicator, refused to accept the argument of merit. It is not comprehensible, that such values placed on worthless lands, not to have been programmed into the computer data work operations. Adjudicator erred in not having the fortitude to ask, how could such gross over assessments have occurred without directives and why does the appellant's evidence show that these abnormal assessments pertain only to municipal lands.
>
> At the hearing, adjudicator erred, in refusing to acknowledge or accept a letter addressed to [the mediator] because the appellant did not forward a copy to MPAC's lawyer.
>
> Adjudicator sent her decision for replies before her final decision. She erred in not addressing any concerns of the appellant's rebuttal or a least commenting on issues, for her final order. Appellant has some concerns that the adjudicator has taken sides with MPAC and erred on impartiality.
>
> Adjudicator erred in not reprimanding MPAC's lawyer for threatening lawsuits against the appellant, for questioning the ethics of MPAC. Again, the adjudicator threatened to eject/end the appellant from the hearing. She refused to accept a document, from our honourable Ombudsman, clearly exposing MPAC as untrustworthy public organization. She asked the document to only be mailed to her. Which was and yet, she has not responded or made any effort to acknowledge

> the [un]trustworthiness of MPAC and consider other pertinent appellant's concerns in her final decision.
>
> *Remedy sought for Request for Reconsideration*
> The appellant requests a new hearing and that the adjudicator take notice of the many concerns and evidence presented in various sent correspondences. If this is not feasible, the office of the Commissioner should reconsider the order and order MPAC to divulge the computer data sought and which only pertains to municipal conservation hazardous lands in MPAC region 9 and 15 [Toronto and Halton-Peel regions].

Analysis/Finding

Based upon my review of the appellant's representations, I note that the appellant has raised the following five grounds in his request for reconsideration, namely that:

1. I required that only the appellant be responsible for providing evidence that responsive records exist;

2. I should have questioned MPAC at the oral inquiry as to how it is "possible that thousands of solely worthless municipal lands could have assessed values in the millions of dollars";

3. I refused to accept at the oral inquiry his letter addressed to the mediator;

4. I refused to take into account his written representations delivered following the oral inquiry, including a document from the Ombudsman which allegedly exposes MPAC as an "untrustworthy public organization"; and,

5. I took sides with MPAC and erred on impartiality.

The appellant asks that I order MPAC to divulge the computer data sought by him and which only pertains to municipal conservation hazardous lands in MPAC Toronto and Halton-Peel Regions.

Based upon my review of the parties' representations made in conjunction with the oral inquiry, the parties' evidence at the oral inquiry and the appellant's request for a reconsideration of Order MO-2440, I find that the grounds set out in the appellant's reconsideration request do not support a finding that a fundamental defect has occurred in the adjudication process. I will deal with each ground of the appellant's request for a reconsideration of Order MO-2440 separately, as follows:

1. Only requiring evidence from the appellant

As stated in Order MO-2440, the test is not whether the appellant has provided evidence that responsive records exist but whether MPAC has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

Both the appellant and MPAC were provided with the opportunity to provide evidence and did provide evidence at the oral inquiry. Both the appellant and MPAC provided written representations before and after the oral inquiry.

Although the appellant would like me to hear evidence and make a determination about how "thousands of solely worthless municipal lands, could have assessed values in the millions of dollars, when hundreds of separate MPAC staff enter data…", my mandate is not to scrutinize the manner in which MPAC assesses land values, but whether MPAC has conducted a reasonable search for records as required by section 17 of the *Act* [Orders P-85, P-221 and PO-1954-I]. This section reads in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

In the NOI, I advised the appellant that an important factor in assessing the reasonableness of the search will be whether he has provided sufficient identifying information to assist MPAC in its search.

Therefore, as stated above, I advised the appellant in the NOI that he would be asked to inform me at the oral inquiry of any details he may be aware of concerning records which have not been located, or any other information to indicate that the search carried out by MPAC was not reasonable.

Similarly, I advised MPAC in the NOI that it would be asked at the oral inquiry to provide me with a summary of all steps taken in response to the appellant's request. In particular in the NOI, I asked MPAC to consider the following:

1. Was the appellant contacted for additional clarification of his request? If so, please provide details including a summary of any further information the appellant provided.

2. Please provide details of any searches carried out including:

- by whom were they conducted
- what places were searched
- who was contacted in the course of the search
- what types of files were searched and finally
- what were the results of the searches

3. Is it possible that such records existed but no longer exist? If so, you will be asked to provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

   Although there is no burden of proof specified in the *Act* in this instance, the burden of proof in law generally is that a person who asserts a position must establish it. Accordingly, MPAC will be asked to respond to the questions posed above and to provide documents or other evidence to support the institution's position.

The appellant implies that I placed an unfair burden of proof on him. Previous jurisprudence of this office states that although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [Order MO-2246].

This was the basis for me asking the appellant to provide evidence at the inquiry. I also required MPAC to provide evidence, as outlined above.

Accordingly, as both parties provided evidence in this inquiry, I find that this ground raised by the appellant does not support a reconsideration of Order MO-2440.

2. Questioning of MPAC

The appellant would have liked me to have questioned MPAC at the oral inquiry as to how it is "possible that thousands of solely worthless municipal lands could have assessed values in the millions of dollars". In addition to the fact that the subject matter of such questions is not within my mandate under the *Act*, the appellant's request as clarified did not seek this information. The appellant's request was limited to searching for specific types of records within the Toronto and Halton-Peel regions. In particular, the outstanding portion of the appellant's request, as agreed to by the parties at the oral inquiry, concerned whether there existed any policies, methodologies and directives regarding the fine-tuning and review of the assessment of municipally-owned flood plain and valley lands in the Toronto or Halton-Peel regions.

The appellant's request was clarified at the request stage and this clarification was confirmed in an email from MPAC to the appellant. The appeal to this office proceeded on the basis of this clarified request. Accordingly, I find that this ground raised by the appellant does not support a reconsideration of Order MO-2440.

3. Refusal to accept letter at the oral inquiry

The appellant had been advised in the NOI to submit all documentation he intended to rely on at the oral inquiry by no later than one week before the oral inquiry. In particular, the NOI stated:

> Please note that if you intend to rely at the oral inquiry on any additional written documentation in addition to the representations referenced in the mediator's report, you should provide this documentation to the Adjudicator with a copy to the other party no later than Tuesday, April 14, 2009.

The only representation of the appellant referred to in the mediator's report was his letter of January 7, 2009. The appellant did not provide any documentation in response to the NOI.

The appellant tried to submit in the midst of the oral inquiry a letter he sent to the mediator dated February 20, 2009. As I had not been advised prior to the oral inquiry that he intended to rely on this letter, I refused to accept this letter at the oral inquiry. I advised him that, as he had not provided a copy previously to MPAC, he should submit this letter with his written representations following the oral inquiry.

The appellant's letter to the mediator was provided to me by the appellant as an attachment to his representations filed following the oral inquiry. This letter contained the appellant's comments about the mediator's report, including his comments on the clarification of his request at the request stage. This letter was considered by me in making my decision in Order MO-2440. This letter includes the following statement by the appellant concerning the clarification of his request at the request stage:

> My main concern is that the mediator has framed her results in such a way that the appellant has relinquished his initial Request for Information because he agreed to a MPAC authored clarification notice. This notice appears to have been done in purpose by [the FOIC] from MPAC, who authored it, to be open-ended. The appellant has always considered and be known to all concerned, that it was an addendum to the initial request.

This issue of the clarification of the appellant's request was dealt with at the oral inquiry. I determined that the appellant had clarified his request at the request stage as set out above and as confirmed in his email to MPAC of June 20, 2008 wherein he stated: "Thank you for your clarification reply and I have no problem in accepting it". The appellant sent this email in reply to MPAC's email to him of June 19, 2008, wherein the FOIC at MPAC stated:

> Further to our discussion today, I am writing to provide you with the clarifications of your five-part access to information request that we discussed. Please advise by return email, or alternatively by telephone, whether I have correctly described your access to information request with the re-wordings below… We will commence a search for any responsive records as soon as we have confirmed the details of your request…

Therefore, although I did not accept the appellant's letter to the mediator at the oral inquiry, I did consider the information in it in conjunction with his representations filed after the oral inquiry. Accordingly, I find that this ground raised by the appellant does not support a reconsideration of Order MO-2440.

4. Failure to take into account written representations

The appellant alleges that I refused to take into account his written representations delivered following the oral inquiry, including a document from the Ontario Ombudsman which allegedly exposes MPAC as an "untrustworthy public organization". However, as can be seen from a review of Order MO-2440, I did take into account the appellant's representations, including the attachments.

As stated above, my mandate is to determine the reasonableness of MPAC's search. The appellant made several references in both his written representations and at the oral inquiry about what he perceives to be MPAC's untruthfulness and deception in its dealing with taxpayers. He would have liked me to conduct an investigation into "an orchestrated policy within MPAC to place high assessments on non-paying municipal lands to increase the overall Ontario total assessed values, for funding purposes". I am not empowered under the *Act* to undertake such an investigation and I declined to do so in making my determination in Order MO-2440. My inquiry was solely concerned with access to records under the *Act*, and in particular, whether MPAC had conducted a reasonable search.

As stated above, my mandate under the *Act* is not to conduct an investigation into MPAC's assessment procedures. Accordingly, I find that this ground raised by the appellant does not support a reconsideration of Order MO-2440.

5. Allegations of Bias

The appellant seeks a reconsideration on the basis that I took sides with MPAC and was not impartial. He submits that I:

> …erred in not reprimanding MPAC's lawyer for threatening lawsuits against the appellant, for questioning the ethics of MPAC. Again, the adjudicator threatened to eject/end the appellant from the hearing.

During the oral inquiry, the appellant made several inflammatory, demeaning and potentially defamatory statements against MPAC and its witnesses. After warning the appellant on more than one occasion that his remarks were inappropriate and asking him to cease making them, the appellant continued to speak inappropriately. I had to warn him that the oral inquiry would be aborted if he did not speak to the witnesses from MPAC in an appropriate manner. Any inappropriate responses by MPAC to the appellant's outbursts were also dealt with by me at the oral inquiry.

As an adjudicator, I have a duty to control what transpires at the oral inquiry. As stated by former Commissioner Sidney B. Linden, Q.C. in Order 164:

> However, while the *Act* does contain certain specific procedural rules, it does not in fact address all of the circumstances which arise in the conduct of inquiries, I must have the power to control the process.

The issue of the bias of an adjudicator at an inquiry has also been considered by Senior Adjudicator John Higgins in Order MO-2227, wherein he stated:

> Bias is a lack of neutrality or impartiality on the part of a decision-maker regarding an issue to be decided. A decision-maker must not be biased as "no one shall be a judge in his own cause." In other words, an individual with a personal interest in the disclosure or non-disclosure of a record must not be the decision-maker who makes the determination with respect to disclosure. A breach of this fundamental rule of fairness will cause a statutory delegate to lose jurisdiction [Order M-1091]. Accordingly, there is a right to an unbiased adjudication in administrative decision-making.
>
> It is not necessary to prove an "actual bias". The test most commonly applied by the courts is whether there exists a "reasonable apprehension of bias". The test for a reasonable apprehension of bias enunciated by the Supreme Court of Canada is "What would an informed person, viewing the matter realistically and practically - and having thought the matter through – conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?" [Order MO-1519]
>
> A recent statement of the law by the Supreme Court of Canada concerning allegations of bias against an adjudicator is found in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259. In that decision, the court stated:
>
>> In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpre J. in *Committee for Justice and Liberty v. National Energy Board*, [(1978) 1 S.C.R. 369], at p. 394, is the reasonable apprehension of bias:
>>
>>> …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more

> likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly."…
>
> *The grounds for this apprehension must, however, be substantial*, and I … refuse to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added.]

In Order MO-1519, Adjudicator Laurel Cropley quoted and adopted the following comment of author Sara Blake in *Administrative Law in Canada (3rd. ed.),* (Butterworth's, 2001), at page 106:

> There is a presumption that a tribunal member will act fairly and impartially, in the absence of evidence to the contrary. The onus of demonstrating bias lies on the person who alleges it … Mere suspicion is not enough …

Applying the tests set out above to the circumstances of this appeal, and taking into consideration the allegations that have been made by the appellant, I find that the appellant's allegations concerning bias are entirely without foundation. By not allowing the appellant to make inflammatory and gratuitous comments during the oral inquiry, I was merely taking control of the process as I am empowered to do by the *Act*. In addition, the conduct of the oral inquiry and the subsequent issuance of Order MO-2440 were done in accordance with the evidence before me in relation to the appellant's request as clarified during the request stage. Accordingly, I am not satisfied that there is a reasonable apprehension of bias concerning the adjudication of this appeal by me. Therefore, I find that this claim by the appellant does not support a reconsideration of Order MO-2440.

Conclusion

In summary, I find that the grounds set out in the appellant's reconsideration request do not support a finding that a fundamental defect in the adjudication process occurred. I will not reconsider my decision in Order MO-2440.

ORDER:

I uphold my decision in Order MO-2440 and dismiss the appellant's reconsideration request.

Original Signed By: October 13, 2009
Diane Smith
Adjudicator