

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

J. Rankin, MEMBER

A. Zindler, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board in respect of a Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	100015007
LOCATION ADDRESS:	1220 59 Ave. S.E. Calgary, Ab.
HEARING NUMBER:	59464
ASSESSMENT:	\$45,150,000

This complaint was heard on the 27th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- C. Van Staden, Altus Group Ltd.

Appeared on behalf of the Respondent:

- A. Jerome

Board's Decision in Respect of Procedural or Jurisdictional Matters:

While neither party raised any issues of a procedural or jurisdictional nature, the Board noted that the file contained evidence that the Complainant's disclosure evidence was not received in time.

The Complaint form shows that the complaint was received on March 4, 2010 by the Calgary Assessment Review Board. The Assessment Clerk's notations show that the Complaint was filed on time, that the filing fee was included as well as the appropriate agent authorization form.

The Assessment Clerk's computer "snapshot" further shows that a hearing notice was mailed on April 13, 2010 setting a hearing date of July 27, 2010 and establishing the deadlines contained in s.8 of Matters Relating to Assessment Complaints Regulation AR 310/2009 (M.R.A.C.). The dates established were: June 14, 2010 for the Complainant's disclosure; July 12, 2010 for the Respondent's Disclosure and July 19, 2010 for the Complainant's Rebuttal.

The "snapshot" indicates that the Complainant's disclosure was received on June 17, 2010 and this is substantiated by an email from a representative of the Complainant to the Assessment Review Board forwarding the Complainant's disclosure. The date and time on the email are 6:21 p.m. on June 17. The Respondent's disclosure was received on July 8, 2010. The Complainant did not file Rebuttal documents.

The "snapshot" further shows that there were Special Considerations requiring a jurisdictional hearing.

The Complainant made an oral request that, if the Board were to rule that there was late disclosure, that the matter be postponed to allow the Complainant to prepare arguments on the merits of the disclosure issue. After the hearing had closed, the Complainant requested an opportunity prepare a written request for postponement to the same purpose.

Issues:

1. Can the Board raise jurisdictional issues that were not enunciated by either the Complainant or the Respondent?

2. Having regard to the jurisdictional issues raised by the Board, can the Board proceed to hear the merits of the complaint?
3. Can the Board accept an oral request for postponement and, is it necessary for the Board to grant a postponement request to hear argument on the merits of the disclosure issues?

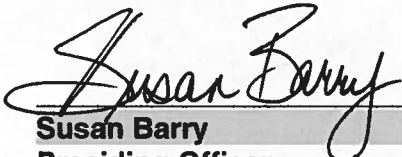
Board's Decision in Respect of Each Matter or Issue:

1. The Calgary Composite Assessment Review Board is a quasi-judicial tribunal established under the authority of the Municipal Government Act. The Act, and the Regulations enacted pursuant to it, create a framework within which assessment complaints are to be managed and heard. The record of the complaint is maintained by the clerk and forms part of the record of the hearing required by s.14 of M.R.A.C. The record of the complaint is maintained in a file that is provided to the Board at the commencement of the hearing. The record is before the Board and the Board cannot ignore that record simply because neither of the parties has reviewed the file in sufficient detail to raise the jurisdictional issues themselves. To do so would subvert the intent of the legislation in ensuring fair and orderly complaint proceedings.
2. M.R.A.C., s.9(2) is clear. "A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8". Section 8 requires complainant disclosure no later than 42 days before the hearing, in this case June 14. The delay in complying with disclosure was not a minor, or a technical delay. The disclosure transmittal did not occur until almost 3 full days after the deadline. The Board has no option but to determine that there has not been compliance with M.R.A.C, s.8 and therefore it cannot hear the merits of the complaint.
3. M.R.A.C., s.15(2) is likewise clear. A request for postponement or adjournment must be in writing and contain reasons. No request for postponement in accordance with s.15(2) M.R.A.C. was made during the currency of the hearing. The Board has no authority to grant an oral request.
4. Even had the Board entertained the Complainant's request to quickly deliver a written request for postponement with reasons, the Board is not required to grant that request. S.15(1) M.R.A.C. states that the Board "may not" grant a postponement unless, at its sole discretion, the circumstances are "exceptional". These were far from exceptional circumstances. It appears that neither party paid sufficient attention to the statutory requirements or to the filing dates. The representative of the Complainant made no mention of mitigating factors when he filed the late disclosure. These are unfortunate circumstances but they are not exceptional.

Board's Decision:

The Board cannot hear the merits of the assessment complaint. The Board will not postpone the hearing to allow argument on the merits of disclosure. The complaint is denied and the assessment of \$45,150,000 is confirmed.

DATED AT THE CITY OF CALGARY THIS 5th DAY OF August 2010.


Susan Barry
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*