

**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, Section 460(4).

between:

The Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Fleming, PRESIDING OFFICER

B. Kodak, MEMBER

T. Usselman, MEMBER

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

Roll Number	Hearing Number	Hotel	Address	Assessment	Date Scheduled
068229301	59446	Marriott	110 9 th Ave. SE	\$53,160,000	July 12
058212903	59933	Sheraton Eau Claire	255 Barclay Pl. SW	\$73,830,000	July 12
068232503	59447	Palliser	133 9 th Ave. SW	\$72,280,000	July 13
200177319	59470	Hyatt Regency	700 Centre St. SE	\$96,331,000	July 15
031021009	57632	Not Identified	3515 26 St. NE	\$19,460,000	July 15
123108201	59711	Not Identified	9206 Macleod Tr. SE	\$9,780,000	July 16
090069709	55975	Best Western	3630 MacLeod Tr. SE	\$6,080,000	July 19
75712801	57591	Wingate Inn	400 MidPark Wy. SE	\$12,040,000	July 19
141121905	56453	Not Identified	12025 Lake Fraser Dr. SE	\$9,800,000	July 19
067230102	57484	Hawthorne Suites	618 5 th Ave. SW	\$35,510,000	July 20
902002708	59878	Delta Airport	8925 Barlow Tr.	\$45,740,000	July 20

This complaint was heard on 12 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:

- *D. Hamilton for the Complainant*
- *K. Anderson representing Miller Thomson, Lawyer for the Complainant*

Appeared on behalf of the Respondent:

- *J. Toogood for the Respondent*
- *S. Cook for the Respondent*

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

Summary

At the beginning of the proceedings, Mr Anderson requested a postponement of the hearing. This hearing was originally convened to deal with 2 Hotel properties, Roll # 068229301 and Roll # 058212903. Mr Anderson took the opportunity to also request a postponement of 9 other Hotel properties. All 11 properties are identified in the table at the commencement of this decision. The Hearings on all of these properties were individually scheduled to take place at the ARB over a period from July 12th, 2010 to July 23rd, 2010.

The basis for the postponement request was the unavailability of the appropriate lawyer from Miller Thompson. The Complainant wished to argue the weightings applied to the 3 year income analysis in the valuation process, and they required a particular lawyer to represent them in this matter. The Complainant advised further that they had discussed this matter with the City during the previous week, and thought, up until the previous Friday, they had agreement for a joint request for postponement. At the hearing, the City indicated that they were prepared to proceed, but they also agreed with the postponement request.

The Board raised the issue of postponements in the new legislation, noting that there had been significant changes. According to the Municipal Government Act, Matters Relating to Assessment Complaints Regulation (MRAC) (Alberta Regulation 310/2009) Section 15, the Legislation now allows a postponement "only" in exceptional circumstances as determined by the Board. In addition, the request must be in writing and contain reasons for the postponement. Finally, the ARB must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

Subsequent to the hearing the Board received a written request for postponement from Miller Thomson on behalf of the Complainant.

Finding

The Board finds that, in this instance, the request for a postponement is an "exceptional circumstance".

Reasons

The new legislation, which came into force January 1st, 2010, has established a standard to be followed in requests for postponements or adjournments. This new standard is more onerous than the postponement process previously permitted by many quasi judicial tribunals concerned with Assessment Appeals, and also the practices of tax agents and municipalities in the Assessment Appeal process in Alberta.


In the matter at hand, the Board concludes that neither party was aware of the Postponement or Adjournment requirements in the new legislation (MRAC Section 15), or its impact, as evidenced by both parties negotiating in good faith concerning a postponement prior to the hearing and neither party raising the new requirements. Accordingly, the Board concludes that this request does represent an exceptional circumstance due to the newness of the legislation.

The Board notes that both parties to this appeal are significant participants in the Assessment Appeal process in the Province and presumes they will consider the requirements of MRAC Section 15 in their future appeals. The Board believes that adherence to the new procedures will assist in more efficient processing and scheduling of appeals which should benefit all parties.

Decision

The request for a postponement is granted as per the written request of Miller Thomson, Solicitor for the Altus Group. The eleven Hotel properties outlined on the first page of this decision will be scheduled for the week of August 23rd, 2010.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF July 2010.


J. Fleming
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.*