

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the City of Calgary Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta (2000) Act.

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Gilmour, PRESIDING OFFICER

A preliminary hearing was convened on the 9th day of July, 2010 at the office of the Assessment Review Board located at Floor number Four, 1212 – 31 Avenue, NE, Calgary, Alberta, Boardroom 1 with respect to the following roll number:

ROLL NUMBER: 103087003

Appeared on behalf of the Complainant:

- *G. Kerslake*

Appeared on behalf of the Respondent:

- *K. Hess*

LEGISLATION CONSIDERED:

Municipal Government Act (MGA)

- 1) s. 309 (1)
 - (c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent out to the assessed person
- 2) s. 460
 - (2) a complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

Matters Relating to Assessment Complaints Regulation (MRAC)

- 3) s. 2
 - (1) If a complaint is to be heard by the assessment review board, the complainant must
 - (a) complete and file with the clerk a complaint in the form set out in Schedule 1
 - (2) If a complainant does not comply with subsection (1),
 - (a) the complaint is invalid

BACKGROUND:

The Complainant on behalf of and as agent for the property owner, in accordance with section 460 (2) of the Municipal Government Act (MGA) and section 2 of the Matters Relating to Assessment Complaint Regulation (MRAC) AR 310/2009.

Pursuant to section 309(1)(c) of the MGA, the Complainant sent the complaint form and the requisite appeal fees to the City by Canada Post in an envelope post marked March 4, 2010 which was one day prior to the filing deadline of March 5, 2010. The envelope was marked received by ARB on March 8, 2010. There is no dispute from either party with respect to these dates.

The City did not file any argument with respect to these proceedings.

ISSUE:

Did the Complainant fail to file his complaint to the City on time, pursuant to section 309 (1)(c) of the MGA or the assessment notice sent to the Complainant?

COMPLAINANT'S POSITION:

The complaint form was filed with the City on time, before the deadline date of March 5, 2010. Reference was made to the Assessment Notice sent by the City to the Complainant which reads:

"Complaints must be filed with:
City Clerk
c/o Assessment Review Board

P.O. Box 2100, Stn M
Calgary, AB T2P 2M5

On the basis of the instruction contained in the Assessment Notice from the City to taxpayers, the Complainant argued that by sending the complaint form to the City by Canada Post in an envelope post marked March 4, 2010, the Complainant had filed the complaint form to the City within the 60 day period, pursuant to section 309 (1)(c) of the MGA.

RESPONDENT'S POSITION:

The City referred to the recent CARB decision between 548886 Alberta Limited, the Complainant and the City of Calgary dated June 30, 2010. The issue was similar to the subject appeal, namely that the complaint was sent by mail before the filing deadline.

The CARB panel determined at the above hearing that the form of delivery by mail from the Complainant to the City was acceptable and complied with the legislation.

The City at this preliminary hearing agreed with the previous CARB decision on the same matter, and agreed that the Complainant had filed the complaint form on time on March 4, 2010 by mailing the form by Canada Post to the Box Office listed in the Assessment Notice.

BOARD'S DECISION IN RESPECT TO THE ISSUE:

The Board agrees with both parties that the Complainant, pursuant to section 301 (1)(c) of the MGA, filed his complaint from to the City before the 60 day deadline had expired. The appeal of the Complainant is allowed and a merit hearing will be scheduled by the Board.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF JULY 2010.


J. Gilmour
Presiding Officer

JG/mc

Cc: Owner

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.*