

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26. Section 460(4).

between:

ALTUS GROUP LTD., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Earl K Williams, PRESIDING OFFICER

Ray Deschaine, MEMBER

Jim Rankin, MEMBER

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

ROLL NUMBER: 086156296

LOCATION ADDRESS: 5255 Richmond Rd SW

HEARING NUMBER: 59252

ASSESSMENT: \$21,980,000

This complaint was heard on 13th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- Altus Group Limited – R. Brazzell and A. Izard

Appeared on behalf of the Respondent:

- City of Calgary – K Hess and R Ford

Preliminary, Procedural or Jurisdictional Matters:

At the outset of the hearing The Respondent brought forward a preliminary matter related to the Complainants' non compliance with Matters Relating to Assessment Complaints Regulations (MRAC) section 8(2). The CARB agreed to hear the arguments on the matter and to render an oral decision on July 13, 2010.

Property Description:

The property is a 70,811 square foot (sq ft) Shopping Centre (Classified as a CM0203 Retail Shopping Centre – Neighbourhood Shopping Centre) on a 7.19 acre site located in the Community of Glamorgan. The Centre is anchored by a London Drugs and has a freestanding bank and restaurant on the property.

Background:

Respondent advised that the Complainant had not disclosed their evidence respecting the complaint on or before the deadline as prescribe by section 8(2) of the MRAC and the Assessment Review Board Notice of Hearing ("Notice") dated April 6, 2010. The evidence was required by May 31, 2010 and was filed at 00:23 a.m. on June 1, 2010. Further the agent has a history of not complying with MRAC section 8(2).

Issue:

Based on the Complainant's non compliance with MRAC section 8 (2) and the agent's repetitive behavior of non compliance with MRAC that a postponement not be granted and the assessment be confirmed.

Board's Decision in Respect of the Issue:

Complainant and Respondent presented a wide range of relevant and less relevant evidence in respect of the issues.

Respondent

Referring to section 8(2)(a) of MRAC the Respondent argued that this provision contains the imperative "must" and therefore this requirement of "at least 42 days before the hearing" is mandatory leaving the CARB without authority to consider evidence filed later than 42 days before the hearing. Further it was argued that section 9(2) reaffirms this requirement again using the word "must". Specifically a CARB must not hear any evidence that has not been disclosed in accordance with section 8. The abridgement provision in section 10 requires the consent of the person entitled to the evidence and the Respondent will not provide their consent.

The Respondent presented evidence that the Complainant had not complied with the Disclosure of Evidence time frame required by section 8(2)(a) of MRAC. In respect of Roll Number 086156296 the Complainant Disclosure Due Date was May 31, 2010 as contained in the Notice of Hearing mailed from the Assessment Review Board on April 6, 2010. The Complainant filed the evidence electronically at 00:23 a.m. on June 1, 2010. The parties did not disagree that the evidence had been filed late.

The Respondent advised that this late filing is not a single event rather there is a history of late filings by the Complainant and by this agent. Specifically on:

- July 6, 2010 at a CARB hearing for Roll Numbers 200669646, 113011993 and 201464104 the Respondent raised as a preliminary matter the non compliance with MRAC section 8(2)(a) by the agent. The disclosure of evidence was late by between 1 and 3 hours. Although the CARB provided an oral decision to grant a postponement the CARB expressed their concern with the repetitive behaviour by this agent.
- July 12, 2010 at a CARB hearing for Roll Number 12136007 the Respondent raised a Preliminary Matter that the Complainant's Rebuttal Evidence which was due July 2, 2010 was received July 6, 2010 and not in compliance with MRAC section 8(2). The CARB decided that rebuttal evidence was not filed in accordance with MRAC section 8(2). Based on MRAC section 9 (2) Failure to Disclose the CARB found for the Respondent and the Rebuttal Evidence was not accepted.

It was argued that the practice of late filings has a financial and non financial impact on the Complainant appeal process. There are delays in decisions, the required preparation for hearings on preliminary matters, preparation for appeals to the MGB, and overall reallocation of resources which impacts through the system.

In summary the Respondent argued that:

- the Respondent is prejudiced by the actions of the Complainant,
- the requirements of section 8(2)(a) of MRAC must be met,
- the repetitive behaviour by the agent of not compiling with MRAC section 8(2) is disrespectful,
- a postponement in respect of Roll Number 086156296 not be granted, and
- the assessment be confirmed.

Complainant

The Complainant presented an evidence package titled London Place West 5255 Richmond Road SW 2010 Assessment Review Board – Preliminary Issue. The evidence included: Arguments, Precedents and a Timeline of Relevant Facts.

The Complainant did not disagree that the evidence had not been filed in accordance with MRAC section 8(2). It was emphasized by the Complainant that MGB Board Order 004/10 and 105/09 recognize that a denial of the right to complain against assessments would be disproportionate to the gravity of the error, that being a late filing.

In the written and oral arguments the Complainant referred the CARB to numerous decisions of the MGB and the courts to support their contention that the Board should not disallow their evidences based on a technicality and should exercise its discretion to ensure that the procedural fairness and the tenants of natural justice are served. It was argued by the Complainant (evidence page 61) that the decision made by the Alberta Court of Queen's Bench (A.B.Q.B. No. 0701/-4629) in the City of Calgary v Gaspar Szentor Holdings et.al supports that the primary purpose of regulations like MRAC is not administrative efficiencies but rather to provide access to the tribunal and procedures that accord natural justice.

In summary the Complainant argued a number of points:

- time is a narrow issue and in their view does not affect the outcome of the appeal of the assessment value,
- no one is harmed by a late filing of evidence especially if the filing is within a day of the required filing date,
- the Complainant has complied within the basic intent of section 8,
- Section 8 should not be interpreted in isolation it is to be interpreted in the broader context of the appeal process,
- If the CARB find that the complaints are technically late then the rules of natural justice should prevail and the Board should not disallow the Complainant's evidence but rather exercise its authority as provided for in section's 10 and 15 of MRAC.

Board Decision and Reasons

The CARB views non compliance with MRAC as a serious matter. A onetime occurrence of not complying with Disclosure of Evidence time frame required by section 8(2) although not acceptable may be overlooked. Repeated non compliance is viewed as bordering on deliberate mischief and disrespect of the Legislation, the Regulations, the Board and the parties including the Complainant and the Respondent.

The CARB rendered an oral decision that the Preliminary Matter related to late filing and non compliance with section 8(2) of MRAC would be heard as a separate matter. As this was not a single occurrence but was representative of a repetitive behavior by the Complainant and this agent, the CARB requested that the Respondent's prepare as evidence a historical summary of the Complainant's and this agent's compliance with section 8(2) of MRAC for the Assessment years 2009 and 2010.

The parties mutually agreed to the schedule for the exchange of evidence based on the CARB hearing the matter on July 29, 2010. Subsequent to the Board scheduling the July 29, 2010

date for the Preliminary Matter the parties mutually agreed to amend the hearing date to July 28, 2010 with a one day adjustment in the schedule for the disclosure of evidence.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF SEPTEMBER 2010.



Earl K Williams
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.*