

**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, Revised Statutes of Alberta 2000 (the Act).

between:

***Shepard Development Corporation
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
J. O'Hearn, MEMBER
A. Zindler, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	201451085
LOCATION ADDRESS:	5075 126 AV SE
HEARING NUMBER:	63057
ASSESSMENT:	\$19,030,000

This complaint was heard on 4 day of November, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Mr. A. Izard* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Mr. I. McDermott* *Assessor, City of Calgary*
- *Mr. K. Gardiner* *Assessor, City of Calgary*

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

The Board notes there is another complaint filed by Wilson Laycraft, Barristers & Solicitors, on behalf of the Home Outfitter (file #64688) which is also associated with this roll number. That complaint was heard on June 16, 2011 and September 19, 2011. It was the intent of the parties and the Board to have multiple complaints associated with one roll number heard together (**CARB 0800-2011-P**). Additional time was required to hear the complaint filed by Altus Group Ltd. on behalf of the property owner which was then rescheduled to be heard on November 4th, 2011. However, that complaint was withdrawn at the outset of the hearing; therefore, the Board issued a separate decision relating to the merits of the Home Outfitter complaint in a separate decision (**CARB 0817-2011-P**). This is a cost application by the Respondent based on Altus Group Ltd. withdrawing its complaint at the merit hearing.

At the commencement of the hearing, the Complainant requested that the assessment on the subject property be confirmed or that he be permitted to withdraw his complaint. His request was based on the Board's ruling on 8888 Country Hills Blvd the day prior (**CARB 0825-2011-P**). He stated that although the capitalization rate and rental rate is different in this instance, the methodology employed by him is similar. He was seeking the Board's guidance on this matter as the Respondent had indicated that they would be seeking costs whether the assessment was confirmed or withdrawn.

The Board recessed for 30 minutes to allow the parties' time to prepare their arguments on this matter.

The Respondent argued that the Complainant was aware of the challenges to his Leased Fee Analysis and had several months to withdraw this complaint. The Respondent argued that the Complainant could have contacted them after yesterday's hearing at 4:30 pm to discuss whether they should withdraw their complaint or not but that did not occur. He noted in an extract from Municipal Affairs board member training materials that a Complainant's decision to withdraw a complaint is generally not subject to costs if it is made during the disclosure period or after the disclosure period but prior to the commencement of the hearing (Exhibit A1 page 2). He argued that is not the case here. The Respondent referred to Schedule 3, Table of Costs, in *Matters Relating to Assessment Complaints Regulation* AR 309/2009 ("MRAC"). It was the Respondent's position that costs are warranted pursuant to Part 1 "a party causes unreasonable delays or postponements" (\$2,000) and under Part 2 "for first ½ day of hearing or portion thereof" (\$1,750).

The Respondent argued that it was not about the money but the actions. He noted that the Schedule 3, the Table of Costs applies equally to both parties. He argued that the Complainant was aware of the Board's ruling on onus that occurred on Wednesday November 2, 2011, and the Board then awarded costs against the Complainant on Thursday, November 3, 2011; therefore the Complainant had Wednesday and Thursday to withdraw their complaint as opposed to waiting until 8:55 am on Friday, November 4, 2011.

The Complainant argued that there were scheduling conflicts in regards to the tenants' complaints but this is the landlord's complaint and this file was not opened until this morning. After the Board rendered its decision in regards to onus and awarded costs against the Complainant in that matter, the Complainant stated that he and his colleagues discussed the best approach to take in light of the Board's ruling. He indicated they wanted to avoid wasting the Board's time but still act on behalf of the best interests of their clients, the taxpayers. He stated that he was in an untenable position and was at the mercy of the Board. It would be vindictive to award costs in this instance.

The Complainant referred to a recent Board decision in relation to costs in support of his position, CO-0007-2011-P (Exhibit R2).

The Complainant argued that he was in a "catch – 22" position. The content of his submission was similar to that in which the Board rendered its ruling and he was attempting to mitigate some of the issues from the November 3, 2011 hearing as the Board is likely to come to the same conclusion. The Respondent, in pursuing a cost application, was not affording the Complainant an opportunity to withdraw the complaint or confirm the assessment. The Complainant argued that he is attempting to ensure that the hearing does not proceed and waste the Board's time.

The Board has set out, in verbatim, its ruling as delivered to the parties at the hearing, as follows:

The Board noted that it pointedly asked the City at the outset of the cost application whether it agreed to the Complainant withdrawing his complaint. The City agreed at that time but the Board noted during their presentation that consent was then retracted. This is not reasonable. The Board will uphold the City's initial consent and allow the Complainant to withdraw his complaint on file #63057.

The Board's decision in relation to onus and subsequent costs regarding the complaint filed on 8888 Country Hills Blvd was rendered to the parties late yesterday at 4:50 pm.

Recognizing the time it would take for the Complainant to consider the Board's decision and the limited time for the Complainant had to advise the Respondent about their decision to withdraw this complaint, the Board finds it is not unreasonable for the Complainant to withdraw his complaint this morning. It would not have been fair under the circumstances to warrant costs in this instance.

The Board therefore dismisses the City's application for costs in the amount of \$3750.00 in full.

Board's Decision:

The Complainant is allowed to withdraw his complaint and the City's application for costs is

dismissed.

DATED AT THE CITY OF CALGARY THIS 20th DAY OF DECEMBER 2011.



Lana J. Wood
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. A1	Applicant's Submission (City of Calgary)
2. R1	Respondent's Submission (Altus Group Ltd.)
3. R2	Respondent's Submission (Altus Group Ltd.)

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.*

FOR ADMINISTRATIVE USE

SUBJECT	PROPERTY TYPE	PROPERTY SUB - TYPE	ISSUE	SUB - ISSUE
CARB	Jurisdictional/Procedural			