

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Southland Transportation Ltd.
564967 Alberta LTD.
Ein-Gedi Investments LTD & Haifa Investments Ltd.
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Chillibeck, PRESIDING OFFICER
Ken Farn, MEMBER
P. Charuk, MEMBER***

These are complaints 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:	091003400 078061306 091010116 091001008
LOCATION ADDRESS:	4105 – 13A ST SE 840 – 26 AV SE 1505 – 410AV SE 4150 – 14A ST SE
HEARING NUMBER:	61088 61177 64300 64313
ASSESSMENT:	\$1,350,000 \$2,160,000 \$8,200,000 \$3,140,000

These complaints were heard on 6th day of July, 2011 at the office of the Assessment Review Board in Boardroom Two located on Floor Number Four at 1212 – 31 Avenue NE, Calgary, Alberta,.

Appeared on behalf of the Complainant:

- *R. Worthington*

Appeared on behalf of the Respondent:

- *T. Luchak*

Observers:

- *G. Bell, Assessor*
- *L. Yakimchuk, MGB Member*

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

Both parties agreed that the hearing of the complainants for the four mentioned properties can heard at one hearing.

At the commencement of the hearing the Complainant brought forward the following preliminary matter for the Board's consideration and decision. The matter is the Respondent did not disclose a summary of the testimonial evidence as required by s.8(2)(b) Matters Relating To Assessment Complaints (MRAT).

Property Description:

The subject properties are classified as industrial property. They have varying building types of IWS or IWM and have a Land Use Guideline (LUG) of IG, IR, or IE. These properties are located in the Central Region in SE Calgary.

Issue:

Should the Respondent be allowed to make their presentation to the Board without having to disclose a summary of their testimonial evidence?

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

The hearing of these complaints is postponed to September 26, 2011 at 9 AM in Boardroom Four on the Fourth Floor at the Calgary Assessment Review Board at 1211 – 31 AVE NE (DJ3 Building).

The Respondent must disclose to the Complainant **only a summary of the testimonial evidence** at least 14 days prior to the hearing date of September 26. The Respondent must not disclose any additional or new documentary evidence to that already disclosed for this hearing.

Respondent's Disclosure Due Date: September 12, 2011.

The Complainant must disclose to the Respondent their rebuttal at least 7 days prior to the hearing date of September 26.

Complainant's Rebuttal Due Date: September 19, 2011.

Board's Reasons for Decision:

The Complainant asserted that the Respondent did not include a summary of testimonial evidence when they made their disclosure pursuant to s.8(2)(b) MRAT which the Respondent did not refute. Also, the Complainant advised the Board that the Respondent was advised of this matter just immediately prior to this hearing.

The Complainant suggested that the Board should set aside this hearing, rather than not hear any matter that had not been disclosed in accordance with section 8, to allow the Respondent to present their case at another hearing date. In the meantime the Respondent should submit their summary to allow the Complainant to respond to or rebut the Respondent's evidence at the hearing. Without the summary, the Complainant is not clear what the Respondent's testimonial evidence consists of and reasonably respond to or rebut at the hearing.

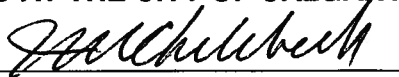
The Respondent asserted that the summary does not hinder the Board from hearing the complaints today and that it is preferred that the complaints be heard today. The Complainant indicated they would accept a postponement of the hearing of the subject complaints.

The MRAT pursuant to s.8(2) requires that a summary must be disclosed with the Complainant's and Respondent's disclosure and Complainant's rebuttal. Also, s.9(2) MRAT requires the Board must not hear any evidence that has not been disclosed in accordance with section 8.

The Board has concluded that the Complainant is at a disadvantage by not having the Respondent's summary of testimonial evidence prior to a hearing. The requirement by s.8(2) MRAT is very specific regarding the disclosure of a summary of testimonial evidence. This provision allows for fairness to both parties to know what the other party will speak to regarding the documentary evidence. Also, not to hear any evidence from the Respondent even though they disclosed their documentary evidence would be unfair in consideration of the Complainant expressing acceptance of a postponement of this hearing to allow the Respondent to submit their summary.

Because the Complainant expressed acceptance of a postponement of hearing the complaints and opined that the Respondent should be given the opportunity to present their case and in the interest of fairness to both parties, the hearing of these complaints shall be postponed.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF JULY 2011.


M. Chilibeck
Presiding Officer

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

NO.	ITEM
1. 1P	Complainant Disclosure re Preliminary Matter

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.*

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Decision No. 1277-2011-P		Roll No.091003400, 078061306,091010116,091001008		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Sub-Detail</u>
CARB	Procedural	Information Exchange	Summary of Testimonial Evidence	