

**CALGARY
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:

***Tuscany Residents Association, COMPLAINANT
(as represented by Altus Group Limited)***

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER

R. Kodak, MEMBER

B. Jerchel, MEMBER

These are complaints to the Calgary Composite Assessment Review Board (CARB) in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
200182806	1 Tuscany Glen Road NW	62949	\$ 6,320
200255677	103 Tuscany Hill NW	62947	\$ 2,120
487021404	198 Tuscany Way NW	62946	\$ 2,120
487021503	199 Tuscany Way NW	62944	\$ 2,120
200182780	2 Tuscany Glen Road NW	62950	\$ 6,320
487021602	201 Tuscany Way NW	62943	\$ 2,120

These complaints were heard on 19th and 20th days of September, 2011 at the office of the Assessment Review Board (ARB) located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant *(All parties were placed under oath)*:

- **R. Brazzell** **Agent, Altus Group Limited**
(Disclosed partway through the hearing, R. Brazzell, is a member of the Law Society of Alberta however is before the Board for the purposes of a tax consultant only)
- **K. Lilly** **Agent, Altus Group Limited**
(Disclosed partway through the hearing, K. Lilly, is a member of the Law Society of Alberta however is before the Board for the purposes of a tax consultant only)
- **C. Van Staden** **Agent, Altus Group Limited**
- **C. Tomiyama** **General Manager, Tuscany Residents Association**

Appeared on behalf of the Respondent *(All parties were placed under oath)*:

- **K. Hess** **Senior Assessor, City of Calgary**
- **T. Johnson** **Assessor, City of Calgary**
- **M. Jankovic** **Policy Analyst, City of Calgary**
- **S. Trylinski** **Solicitor, City of Calgary**
(Disclosed at the beginning of the hearing, S. Trylinski, is a member of the Law Society of Alberta and is before the Board for the purposes of a solicitor for the Respondent)

The following individuals were present for all or part of the proceedings and did not appear on behalf of a party:

- **C. Collie** **Administrative Assistant, Altus Group Limited**
- **T. Sinclair** **General Manager, Sundance Lake Residents Association**
- **B. Buxton** **General Manager, McKenzie Lakes Residents Association**
- **C. Groom** **General Manager, New Brighton Residents Association**
- **K. Shopland** **General Manager, Auburn Bay Residents Association**
- **L. Challes** **Representing, Cranston Residents Association**
- **E. D'Altario** **Assessor, City of Calgary**
- **W. Malan** **Manager of Customer and Governance Services, City of Calgary**
- **M. Mahoney** **Senior Policy Analyst, City of Calgary**
- **L. Raines** **Executive Assistant, City of Calgary**

References have been made to numerous sources of material using the following abbreviations, relevant sections of these resources are found in Appendix "C":

"the Act"	The Municipal Government Act <i>Chapter M-26, Section 460, Revised Statutes of Alberta 2000</i>
"MRAC"	Matters Related to Assessment Complaints Regulation <i>Alberta Regulation 310/2009</i>
"COPTER"	Community Organization Property Tax Exemption Regulation <i>Alberta Regulation 281/1998 with amendments up to and including Alberta Regulation 77/2010</i>
"ARB Policy"	Calgary Assessment Review Board Policies and Procedural Rules <i>Revised – March / 2011</i>

“Black’s Law”

Black’s Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2009. Black’s Law Dictionary (9th ed.). St. Paul: Thomson Reuters;

“Oxford”

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

At the commencement of the agenda on September 19th, 2011 the Board had twenty-eight files on the docket set for hearings. One file was not related to the resident association issues and five hearings were deemed to belong to a Local Assessment Review Board (LARB) for hearings as they were residential properties which did not fall under the jurisdiction of this Board. Below are the remaining twenty-two files which had common preliminary, procedural and jurisdictional issues:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:
487029209	212 Tuscany Way NW	62930
200182806	1 Tuscany Glen Road NW	62949
200255677	103 Tuscany Hill NW	62947
487021404	198 Tuscany Way NW	62946
487021503	199 Tuscany Way NW	62944
200182780	2 Tuscany Glen Road NW	62950
487021602	201 Tuscany Way NW	62943
487029100	9 Tuscany Valley Way NW	62941
200770196	200 Auburn Bay Boulevard SE	62932
756000832	3 Suncrest Way SE	64215
756066486	63 Suncrest Way SE	64218
200701712	2 New Brighton Drive SE	62929
201931620	11 Cranarch Road SE	62921
792008906	1 Cranston Drive SE	62952
152077608	16199 McKenzie Lake Way SE	62927
200609766	225 Chaparral Drive SE	62924
201560521	225W Chapparral Drive SE	62925
789016805	50 Chaparral Green SE	62933
789061702	2 Chapala Crescent SE	62934
200919348	711 Chapala Gate SE	62935
200490993	545 Chaparral Drive SE	62938
200373645	232 Chapala Drive SE	62939

Issue 1 - Photograph of Hearing Table:

The Board has determined that any photograph taken by any party of any part of the ARB office including the hearing rooms cannot be used and shall not be used for any purpose regardless if a hearing is in progress or not.

The Respondent (K. Hess) raised a preliminary issue regarding a photograph or photographs taken by the Complainant of the Boards' table. The Respondent wanted to know why and wanted a copy. Prior to the Board entering the hearing room, the Complainant has been accused of breaking posted rules and used a portable electronic device to photograph the hearing room table and email the photograph off premises. Below represents the dialogue between the parties:

R. Brazzell responded to the Respondent's preliminary issue by saying: *"Sure, it (the photograph) was just for the purpose to showing the volume of materials, no one was in the room, it was just a matter of interest but we're happy to provide that (a copy) to the City".*

The Respondent pressed for more information by asking: *"and it will not be used for any other actions..."*

R. Brazzell interrupted and said: *"No! That is not the intent of the photograph."*

K. Hess then stated: *"I expect Mr. Brazzell will forward that to me at the next break."*

At this time legal counsel for the Respondent spoke: *"And if I can just speak up sir, Susan Trylinski, it is the first hearing I have ever attended where pictures have been taken of the table of the Board and I think this is a significant event, we've also, and I will be quite frank with you, we've also been told that the next step here is to go with the legal action so my concern here is that those pictures will somehow make their way into the legal action or be used by the legal counsel or by Altus to demonstrate, look here are pictures of the Board table prior to this hearing starting. So first of all what I am saying is the Board has to carefully consider what to do under these circumstances and secondly, I think the Board has to identify in detail for the record exactly which documents were on the table, is this one hearing? Is this ten hearings? Is this twenty hearings? How many roll numbers and things like that? So those are my observations, and excuse me for interrupting".*

R. Brazzell replied by saying: *"I am not entirely clear the position of the Respondent, they don't want it (the photograph) to show up in this or any other legal proceedings, is that the position of the Respondent?"*

S. Trylinski added: *"Yes that's correct sir, I think that you don't walk into a courtroom and take pictures and if this going to set a different process or procedure, that you're now allowed to come in and take pictures of each other, it is a very, very different matter and as I said, this is the first time I have ever seen this operate in all my entire life as a lawyer."*

R. Brazzell replied by saying: *"I guess my position is, it is not a recording, it's not for the purpose of recording what happened at the hearing, nor anything of that nature, and it is strictly the layout of the room."*

K. Hess asked: *"Mr. Chairman, why would you take a picture? And why would you do it when no one else is in the room? And we have had a suggestion, a fairly significant suggestion, in an email correspondence from Mr. Brazzell over the weekend that if he doesn't get his way at this Board he is going on to Queen's Bench, and he's going there this morning. So I can see no purpose for that picture other than to go in a Queen's Bench application."*

Prior to allowing anymore dialogue, the Board recessed to clearly understand legislation, regulation and policy.

The Board reviewed *the Act* and *MRAC* regulation and found no conclusive prohibition from recording. The *ARB Policy* was reviewed and the Board also noted a sign posted in the hallway leading to the boardrooms. It is clear and not conditional regarding the prohibition of cameras or other electronic devices (see appendix "B").

The Board is satisfied that once the boardroom contains files to be heard by the Board and/or evidence which is automatically deemed evidence for the Board that the proceedings of the Board have commenced. Furthermore the Board finds the signage as you enter the boardrooms could not be any clearer when stating that cameras and recording devices are not permitted in any boardroom.

The Board reconvened, and prior to resuming the preliminary issue, the Presiding Officer had

the Complainants' and the Respondents' swear to the veracity of their evidence.

Secondly the Presiding Officer had understood that there was another individual before the Board who is an attorney in addition to the attorney who introduced themselves as such. The Board was unclear in which capacity this person was appearing before the Board.

After being asked, nearly an hour into the proceedings, R. Brazzell stated to the Board: *"I am here as a tax consultant. Although I am a member of the law society in the provinces of Manitoba and Alberta, I am not here as a lawyer, I am not here as legal counsel to Altus or legal counsel to the residents associations. I am here as a tax consultant and that is specifically contemplated in the code of professional conduct that if you are going to act as something other than as legal counsel that at the hearing you clarify the capacity in which you're acting when you are acting in activities other than the practice of law. I am not here practicing law I am here as a tax consultant on behalf of the Complainants."*

K. Lilly stated: *"The same thing applies to myself"*. The Presiding Officer had no knowledge of K. Lilly's legal training and asked all others who are to appear before the Board to disclose if they are members of the law society and if they are appearing before the Board in that capacity. The only person appearing as legal counsel that the Board was aware of is S. Trylinski who clearly articulated that fact at the first available opportunity.

The Board is unsure why R. Brazzell and K. Lilly chose not to disclose their status as Officers of the Court during introductions, chose not to disclose their status the first time they spoke to the Board and chose not to disclose their status when taking the oath. The Board is quite concerned by these choices and can only assume that all testimony, prior to the disclosure of their status, was done so in their capacity as Officers of the Court and as members of the Law Society of Alberta.

In resuming the preliminary issue, the Board questioned the Complainants and learned that there was a photograph taken of the boardroom table, it was taken by K. Lilly and immediately emailed to legal counsel for Altus Group Limited. The Board finds the conduct of the Complainants disturbing and made this clear statement:

A photograph is not permitted of anything within the ARB hearing rooms, there is a sign prior to reaching any of the boardrooms and it applies to every boardroom in this building. That photograph is not a legal photograph, we request that you delete it and it cannot and will not be used in any capacity for this hearing or anything arising from this hearing.

A lengthy discussion ensued as to the Complainant's ability to destroy all copies of the photograph. The Board got the distinct impression that the Complainants had no intention of destroying the photograph, and they choose their words carefully to suggest they would comply with the Board's direction.

At the time this photograph was taken by the Complainant, the boardroom had a full weeks' worth of files on the desk. These files were copied in triplicate so each member of the Board had their own copy. The docket for the entire week contained twenty-eight files. It is common for each file to contain several hundred pages of paper. Much of this paper is copied twenty-eight times as it is standard practise for all parties to resubmit common evidence to each file. With twenty-eight files and perhaps 300 pages or more on a typical file, there may have been 7,000

to 8,000 pages on the boardroom table. Multiply that 7,000 to 8,000 pages by three and the paperwork could have easily been 21,000 to 24,000 pages. The Board is accustomed to large submissions and, as in the case before us (CARB 2256/2011-P), the Board after hearing the first appeal learned that perhaps 50 to 100 pages were referred to by each party, and this hearing dealt with eight (six under decision CARB 2268/2011-P) of the twenty-eight files, the remaining hundreds of pages in these files were there as backup if the Board required them. In one example, the Complainant entered into evidence 476 pages from one document (three copies) and did not direct the Board to a single word contained within. The Board noted that in addition to the documents disclosed and produced for the Board, there were thousands of pages which were inadvertently duplicated which may have given the appearance of more documents than were actually before the Board. The Board cautions anyone looking at a photograph of perhaps 20,000+ pages and then assuming that the Board or the parties required more time to digest them.

Issue 2 - Postponement Request:

The Board denied the postponement request of the Complainant as there were no exceptional circumstances.

The Complainant requested a postponement for all twenty-eight files on the Board's docket. As one file was not associated with the residents association and five were not under the jurisdiction of the Board, this request pertained to twenty-two files scheduled for hearings.

The legislation and regulations pertinent to the postponement were reviewed in *MRAC 15(1)* and *the Act 468(1)*.

The grounds pertinent to the postponement request as we understand them from the Complainant are:

1. The amount of material submitted by the Respondent, which amounts to approximately 1000 pages was virtually impossible to examine prior to rebuttal deadline,
2. There have been numerous meetings and consultations which have compromised our ability to prepare our rebuttal materials,
3. On Tuesday, September 13, 2011 the Province announced a proposed exemption category for residents associations,
4. The Respondent requested supplemental information from the residents associations, which they received September 12, 2011, only 7 days prior to this hearing,
5. There is opportunity for additional negotiation or compromise to narrow the issues to be adjudicated,
6. The complexity of the matter, which involves 28 (actually 22) roll numbers and the jurisdiction of both the CARB and the LARB dictates that the single day that has been scheduled is not sufficient to hear the matter in a manner fair to the Complainants, and
7. The hearings for 7 different residents associations are presently scheduled for one day and it is not possible to coordinate witnesses or to adequately present the evidence.

The Respondent took the position that there is no need to postpone and specifically commented on each reason provided by the Complainant, as follows:

1. The Complainant could have requested a postponement on receipt of the Respondents materials if they felt they needed more time. Instead the Complainant responded with 371 pages of rebuttal information, and waited until there was less than a single working hour before the hearing scheduled time and a full week after submitting their Rebuttal Documents, before requesting a postponement,
2. There has been one short meeting, prior to receiving the Respondent's disclosure, which should not have hindered the Complainant's ability to respond and indeed the Complainant did respond with hundreds of pages of rebuttal information,
3. The proposed change in regulation will not impact the current year's assessment or this hearing,
4. The Respondent does not need additional time to review the supplemental information and is prepared to proceed. The previous request from the Complainant for a postponement was to allow the Respondent more time to review this same information before the hearing and the fact is the Respondent did not and does not need more time and is ready to proceed,
5. There is no additional negotiation or compromise as the residents associations are taxable, and
6. The Respondent is ready to proceed and came prepared for the two days which were assigned understanding that if more time is required the Board and boardroom is available.

The Board determined the following in regards to the grounds for postponement brought forward by the Complainant:

1. The Complainant seemed capable of understanding the Respondent's Disclosure and responded with hundreds of pages in rebuttal. At no time prior to the Rebuttal Document submission deadline did the Complainant indicate that they needed more time to respond due to the volume or complexity of the issues before them,
2. No documentary evidence exists to collaborate the suggestion that the Complainant was tied up in meetings with the Respondent and therefore unable to properly submit rebuttal information. The verbal evidence from the Respondent refutes this argument,
3. Any future legislative or regulatory change has no effect on these complaints. The Board will interpret the valid legislation and regulation as at the hearing date,
4. The Respondent has confirmed they have received the additional information requested through supplemental request for information forms and acknowledged that they do not need additional time to digest that information. The Respondent is ready to proceed,
5. The Respondent has indicated to the Complainant previously on which files there is room to move or negotiate. The Respondent indicated that there is no need for more negotiation, and is ready to proceed,
6. Any complication which had been created was done so at the request of the Complainant. The ARB put together a proposal to hear the LARB and CARB hearings at the same time to accommodate the request of the Complainant, however, the Complainant has now indicated that they are not consenting to this process and is not sure how the Courts would rule on it. The Board determined, that with the direct threat of Court challenge on a procedural matter, it would

7. separate the LARB hearings from the CARB hearings, and This hearing and series of hearings were scheduled in the same manner as is the practice of the ARB. The Complainant, as a professional tax consulting firm, appears before the Board each and every week and is quite aware that typically a series of hearings, while scheduled for one day, are dealt with until the files are complete, which usually spans the course of an entire week. No evidence was produced indicated that the Complainant must complete all hearings during a single day.

Issue 3 - Validity of the Complaint Form:

The Board determined that the complaint forms are valid with the appropriate attachment included as was originally intended by the Complainant. The Board advises Complainant to add their attachment to each complaint form to prevent a file from being dismissed for lack of reasons. In addition all applicable matters (and ONLY applicable matters) must be checked off on the complaint form regardless if they are mentioned on the attachment. The Board notes that the complaint form must have an agent authorization form attached if an agent is being used. No costs awarded.

Prior to the evidence being disclosed the Board became aware of inconsistencies and missing information on many of the twenty-two complaint forms before the Board

Many of the above complaint forms had only two matters indicated in section 4; *an assessment* and *an assessment class* as being incorrect. Some of the forms also had *whether the property or business is exempt from taxation under Part 10* indicated as a matter to be discussed. In addition all of the complaint forms indicated "see attached" in section 5 for the requested assessment amount and reasons for the appeal. Only two of the complaint forms actually had an attachment other than the original assessment notice. The two complaint forms which had an additional attachment contained a reference to the remaining twenty complaint forms.

The Respondent indicated that the Complainant filed 900 complaint forms on the final deadline date for the Assessment Review Board to accept complaints, including the twenty-two before the Board. These 900 complaints represented approximately 60% of all the complaints this agency filed yet somehow they expected the ARB clerk to read through all of the attachments and try and sort out which attachment goes with which complaint. This is an unreasonable request and is asking far too much of the clerk. The attachment filed with the complaint form was the actual assessment notice, which when put in context of the complaint forms' "see attached" note, indicates that their request is in fact as assessed.

The Board after speaking to the clerk of the ARB determined that the manner in which the complaint forms had been submitted meant no attachments were received on twenty of the twenty-two complaints. The clerk files exactly what has been received. The clerk does not read through each attachment to find a note on the final page expressing that the Complainant wanted these pages to be copied and added to an additional twenty complaint forms. The clerk did indicate though, had they known the attachment pertained to the additional twenty files, they would have added it for the Complainant.

The Complainant indicated that the complaint forms were accepted as submitted, the hearings were scheduled and the disclosure process was completed therefore all the complaints are valid

in their opinion.

The Complainant requested that due to the gravity of the situation and the severity of the recourse that a separate hearing be scheduled to deal with this issue in that within natural justice and procedural fairness they require time to clearly understand the case being brought against them and need to be provided an opportunity to properly defend themselves.

What is at issue is contained within *the Act* sections 460(7) and 467(2) as well as *MRAC* regulation sections 2(1), 2(2) and 9(1). The Board, in making the decision, understood the very harsh consequences for the Complainant. The Board is focussed on providing a fair hearing and ensuring that legislation and regulations are adhered to by all parties and as such conducts a review of the complaint forms in each hearing to determine exactly what is under complaint and whether the complaint is valid. In this case, twenty of the complaint forms as submitted are not technically valid, however, whereas the complaints were accepted and the hearings were scheduled, they appeared to be valid complaints from the ARB's perspective. The Complainant did disclose as required and the Respondent did, in fact, properly answer that disclosure with their own disclosure on all twenty-two files including the twenty with errors. The Respondent did disclose with a great deal of detail, indicating to the Board that the Respondent clearly understood what was under complaint. Therefore there is no prejudice towards the Respondent from the error.

The Board found it prudent to accept the complaints as they were intended to be filed, however, perhaps this is a question better answered by the Court. The Board also wishes to advise anyone placing a complaint before the Board to include reasons on or attached to the initial complaint form. The Board does not recommend referring from two complaint forms to twenty additional complaint forms. The Board notes that the complaint form should also have an agent authorization attached if an agent is being used.

The Board wasted considerable time trying to understand the complaints before the Board and who was permitted to act on behalf of the Complainant. The Board considers this an unreasonable delay and may choose to award costs in the future for such unnecessary delays.

Issue 4 - Failure of the Assessment Review Board to provide complaint forms to the municipality in their entirety:

The Board determined that the complaint forms are valid.

The Respondent indicated that the Assessment Review Board did not provide the municipality with a copy of the complete complaint forms as required. The Respondent is of the opinion that the complaints are not valid and referred to *the Act* section 462(2).

The Respondent further led the Board to *MRAC* 2(1) and 2(2) and requested that the Board follow the regulation and not hear these complaints.

The Board determined that the Respondent could have done a simple review of the complaint form and challenged the validity of the complaints with a preliminary hearing prior to the scheduled time of these hearings. The Respondent had not even noticed the errors until the Board reviewed the complaint forms at the hearing.

Issue 5 - Decision Timeline:

The Board determined to render a decision before the end of the taxation year.

Both the Complainant and the Respondent indicated to the Board that no appeal would be sought under *the Act* 468(1) if a decision is not rendered within 30 days of the hearing. The Board thanked both parties for their understanding and advised both parties that the Board would thoroughly examine the issues and render a decision as expeditiously as possible before the end of the taxation year.

Issue 6 - Onus:

The Respondent requested the Board to decide on a question of Onus on six of the eight files currently before the Board and whether the Complainant has made a *prima facie* case. This question of Onus pertains to the following six files.

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:
200182806	1 Tuscany Glen Road NW	62949	\$ 6,320
200255677	103 Tuscany Hill NW	62947	\$ 2,120
487021404	198 Tuscany Way NW	62946	\$ 2,120
487021503	199 Tuscany Way NW	62944	\$ 2,120
200182780	2 Tuscany Glen Road NW	62950	\$ 6,320
487021602	201 Tuscany Way NW	62943	\$ 2,120

Onus is on the Complainant to prove their case in the main disclosure. They must prove the assessment is incorrect. The Complainant's main request is for exempt status under *the Act* and *COPTER*. The Complainant provided a document C3 with 476 pages in support of their request on these six files but did not direct the Board to a single word contained within. The Board asked the Complainant if they wished to present this evidence and the Complainant responded that did not wish to.

The Respondent argued there is nothing in evidence pertaining to the exemption request for the six ornamental parks. The Respondent continued by citing that there is an expectation in legislation for the taxpayer to show what is wrong with the assessment, what ought to be corrected. The Complainants must prove that they met a *prima facie* case with their disclosure.

The Board found that the question of Onus is always germane. The Complainant should be prepared to defend on a question of Onus at every hearing. The Board found that making a verbal decision on Onus at a hearing when the Complainant chose not to present their evidence is fair. Having the Complainant throw in a document with 476 pages into evidence and asking the Board to read it to see if its relevant is not how the Board operates. The Board asked the Complainant to present relevant evidence from the package for the rolls before the Board. The Complainant declined stating there was no specific evidence for these rolls; the evidence was general in nature. In this case, the Board found that Onus had not been met and concluded the hearing for these six roll numbers.

No additional preliminary, procedural or jurisdictional issues were raised.

SECTION B: Issues of Merit**Property Description:**

The subjects are properties owned and used by the Tuscany Residents Association (TRA) and are located in the *neighbourhood community* of Tuscany in the North West quadrant of Calgary.

The parcels are small remnant lands located within the Tuscany *neighbourhood* used for signage and landscaping.

All properties within the TRA boundary are required to pay an annual *membership* fee by way of an encumbrance. If any property *owner* rents their premises they, at their option, may permit the tenant to become a member by relinquishing their ability as property *owner* to hold *membership*. The *owner* and tenant cannot both hold a *membership* at the same time.

A small portion of Tuscany was developed by a different developer therefore *membership* is optional for those property *owners*. However in the first instance that a homeowner in this area, known as Tuscarora, joins then an encumbrance is placed on their property and it remains in perpetuity.

Issues:

The Board deemed the following three matters to have been selected on the complaint form:

- Matter 3 assessment amount
- Matter 4 assessment class
- Matter 10 whether the property or business is exempt from taxation

Upon hearing the complaint it was obvious that only a single matter was before the Board:

- Matter 10 whether the property or business is exempt from taxation

The real issue at hand is the interpretation of *the Act* and regulation as it pertains to the subject properties and whether they are exempt from taxation or not. These are the questions the Board must answer:

- Question 1 Are the subject properties held by a non-profit organization? (*the Act* section 362(1)(n)(ii), *COPTEP* sections 6, 7 and 9)
- Question 2 Are the subject properties used solely for community games, sports, athletics or recreation? (*the Act* section 362(1)(n)(ii), *COPTEP* section 9(1)(b))
- Question 3 Are the subject properties held for the benefit of the *general public*? (*the Act* section 362(1)(n)(ii), *COPTEP* section 1(1)(c))
- Question 4 Are the subject properties used in the operation of a professional sports franchise? (*COPTEP* sections 1(1)(d) and 9(1)(a))
- Question 5 Are the subject properties used by persons under 18 years of age at least 60% of the time? (*COPTEP* sections 4(2) and 9(1)(b))
- Question 6 Are the subject properties restricted greater than 30% of the operating time on the basis of:
 - a. race, culture, ethnic origin or religious belief, (*COPTEP* 7(1)(a))

- b. the *ownership* of property, (*COPTER* 7(1)(b))
- c. the requirement to pay fees of any kind, other than minor entrance or service fees, or (*COPTER* 7(1)(c))
- d. the requirement to become a member of an organization. (*COPTER* 7(1)(d))

Question 7 Is the subject property held by and used in connection with a *community association* as defined in the regulations? (*the Act* section 362(1)(v), *COPTER* 12(1)(c))


Complainant's Requested Value: Exempt

Board's Decision:

The Board finds the Complainant failed to prove a *prima facie* case and therefore lost their appeal on the basis of Onus not being met.

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:	ASSESSMENT:	BOARD DECISION:
200182806	1 Tuscany Glen Road NW	62949	\$ 6,320	CONFIRMED
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200182780	2 Tuscany Glen Road NW	62950	\$ 6,320	CONFIRMED
487021602	201 Tuscany Way NW	62943	\$ 2,120	CONFIRMED

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

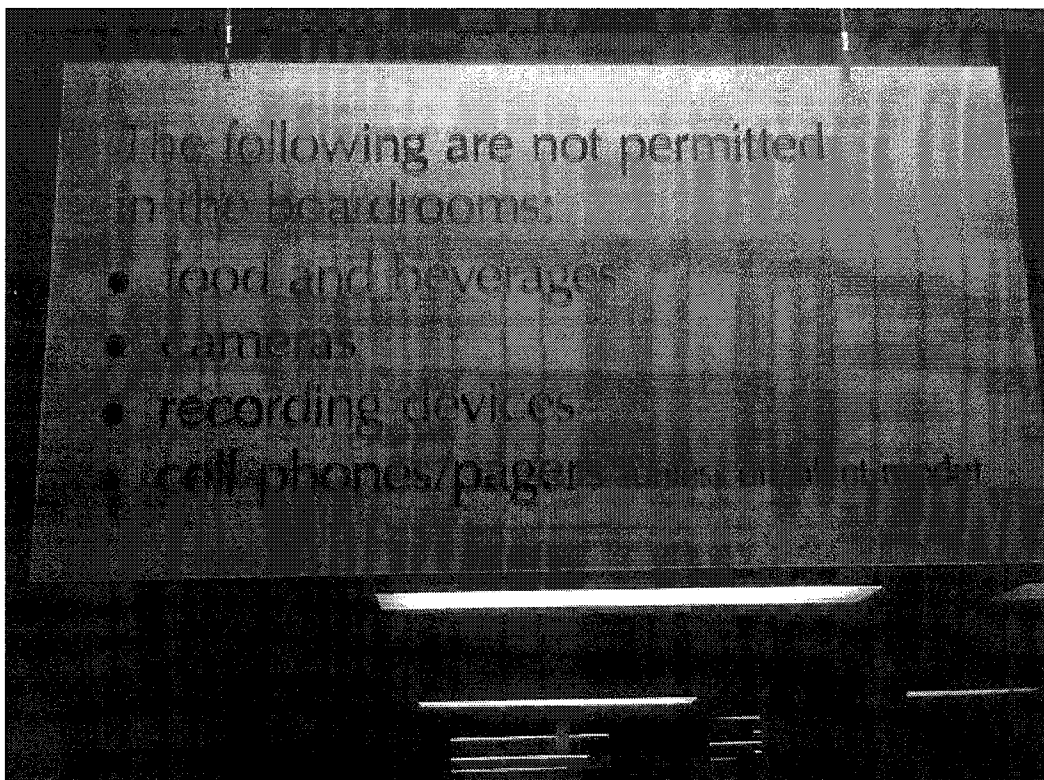

 J. Dawson
 Presiding Officer

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

NO.	ITEM
1. C1	Postponement request
2. C2a	Complainant Disclosure – Residents Association pages 1 – 35
3. C2b	Complainant Disclosure – Residents Association pages 36 – 71
4. C2c	Complainant Disclosure – Residents Association pages 72 – 107
5. C2d	Complainant Disclosure – Residents Association pages 108 – 143
6. C3a	Complainant Disclosure – Ornamental Parks pages 1 – 58
7. C3b	Complainant Disclosure – Ornamental Parks pages 59 – 193
8. C3c	Complainant Disclosure – Ornamental Parks pages 194 – 354
9. C3d	Complainant Disclosure – Ornamental Parks pages 355 – 476
10. C4a	Complainant Disclosure – Tuscany pages 1 – 45
11. C4b	Complainant Disclosure – Tuscany pages 46 – 91
12. C4c	Complainant Disclosure – Tuscany pages 92 – 137
13. C4d	Complainant Disclosure – Tuscany pages 138 – 183
14. C4e	Complainant Disclosure – Tuscany pages 184 – 186
15. C5	Rebuttal Document – Residents Associations pages 1 – 371
16. R1	Email regarding postponement request
17. R2	Respondent Disclosure – Tuscany

APPENDIX "B"

PHOTOGRAPHS OF BOARD NOTICE:



APPENDIX "C"**LEGISLATION AND
RESOURCE MATERIALS:****The Municipal Government Act**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Complaints

- 460(7)** A complainant must
- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
 - (b) explain in what respect that information is incorrect,
 - (c) indicate what the correct information is, and
 - (d) identify the requested assessed value, if the complaint relates to an assessment.

Notice of assessment review board hearing

- 462(2)** If a complaint is to be heard by a composite assessment review board, the designated officer must
- (a) within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and

Decisions of assessment review board

- 467(2)** An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

Assessment review board decisions

- 468(1)** Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,
- (a) within 30 days from the last day of the hearing, or
 - (b) before the end of the taxation year to which the complaint that is the subject of the hearing applies,
- whichever is earlier.

Appeal

- 470(1)** An appeal lies to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.
- 470(2)** 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) a 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).

Matters Related to Assessment Complaints

Alberta Regulation 310/2009

Documents to be filed by complainant

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

Failure to disclose

- 9(1)** A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

Postponement or adjournment of hearing

- 15(1)** Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

Calgary Assessment Review Board Policies and Procedural Rules

Revised – March / 2011

Hearings – evidence and exhibits

- 37(2)** The following forms and statements shall, at the commencement of a hearing, be considered as evidence before the Board without being marked as exhibits;
- (a) a complaint under section 460 of the Act;
 - (b) any form or statement of a Property Assessment Notice or Business Tax Notice;
 - (c) an Agent Authorization Form.
- 45** No original Board record, or copy of a Board record, or exhibit, or copy of an exhibit, from any proceedings before the Board, may be removed from the office of the Board without the express authorization of the General Chairman or the clerk of the Board.
- 48(1)** No person, other than the clerk, shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record of Board proceedings.
- 48(2)** No person may, during a hearing, use or employ any electronic device that causes disruption to, or unacceptable distraction in, proceedings of the Board.

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters;

- community,** 1. A neighbourhood, vicinity, or locality. 2. A society or group of people with similar rights or interests. 3. Joint ownership, possession, or participation.
- ownership,** The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable.
- neighbourhood,** 1. The immediate vicinity; the area near or next to a specified place. 2. People living in a particular vicinity, usu. forming a community within a larger group and having similar economic statuses and social interests. 3. The condition of being close together.
- private, adj.** 1. relating or belonging to an individual, as opposed to the public or the government.
- public, adj.** 1. Relating or belonging to an entire community, state, or nation. 2. Open or available for all to use, share, or enjoy.
- public, n.** 1. The people of a nation or community as a whole. 2. A place open or visible to the public.
- resident, n.** 1. a person who lives in a particular place. 2. a person who has a home in a particular place. In sense 2, a resident is not necessarily either a citizen or a domiciliary.
- voluntary, adj.** 1. Done by design or intention. 2. Unconstrained by interference; not impelled by influence. 3. Without valuable consideration or legal obligation; gratuitous. 4. Having merely nominal consideration.

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada;

- community,** 1 a. All the people living in a specific locality. b. A specific locality, including its inhabitants. c. A small incorporated municipality. 2. A body of people having a religion, a profession, etc., in common. 3. Fellowship of interests etc.; similarity. 4. A monastic, socialistic, etc. body practising common ownership. 5. Joint ownership or liability. 6. The public.
- exclusive, adj.** 3. tending to exclude others, 4. catering for few or select customers.
- general, adj.** 1 a. completely or almost universal. b. including or affecting all or nearly all parts or cases of things. 2. prevalent, widespread, usual. 3. not partial, particular, local, or sectional. 4. not limited in application; relating to whole classes or all cases.
- general public, n.** the people of a community collectively, esp. those not enjoying special privileges.
- membership, n** 1. The state or condition of being a member. 2. The number of members in a particular body. 3. The body of members collectively.
- owner, n.** A person who owns something.
- neighbourhood, n.** 1 a. A district, esp. considered in reference to the character or circumstances of its inhabitants. b. A small, but relatively self-contained section of a larger urban area. 2. the people of a district; one's neighbours. 3. The nearby or surrounding area, the vicinity. 4. Belonging to or serving a particular neighbourhood.

private , adj.	4 a. not open to the public. b. for an individual's exclusive use.
public , adj.	1. Of or concerning the people as a whole. 2. Open to or shared by all the people. 3. done or existing openly.
public , n.	1. The community in general, or members of the community. 2. A section of the community having a particular interest or in some special connection.
resident , n.	(often followed by 'of') 1. a permanent inhabitant (of a city, neighbourhood, building, etc.).
resident , adj.	1. residing; in residence.
Rotary Club , n.	a local branch of Rotary International.
voluntary , adj.	1. Done, acting, or able to act of one's own free will: not constrained or compulsory, intentional.

An appeal may be made to the Court of Queen's Bench, as per section 470 of the Act, 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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Recreation	Other Recreation	Exemption	COPTER