

REVISED AS TO DECISION NUMBER ONLY
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:

Stampede Nominee Inc. (C/O Arcturus Realty Corporation, as represented by Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER
I. Fraser, 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 Amended 2010 Assessment Roll as follows:

ROLL NUMBER:	200391027
LOCATION ADDRESS:	833 4 Av S.W. Calgary, AB
HEARING NUMBER:	64954
ASSESSMENT:	\$12,350,000

This complaint was heard on the 20th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *D. Genereux, Altus Group Limited*

Appeared on behalf of the Respondent:

- *J. Toogood, City of Calgary*

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

This matter is before the Board as a complaint against an Amended 2010 Assessment Notice. The Amended Notice was issued on December 2, 2010. The Complaint was filed in time; however, due to an administrative error within the Assessment Review Board, there was a delay in scheduling the hearing. The Complaint is properly before the Board.

Property Description:

The property under complaint is a 44,582 sq.ft. office area, occupying suites 500, 600 & 700, within a 155,701 sq.ft. B class, Highrise office building, constructed in 1981, that is situated on a 0.43 acre parcel in the Downtown Commercial Core. It is assessed using the Income Approach to value.

Issues:

Should the roll number be cancelled and the 2010 assessment be reduced to zero, having regard to procedural fairness and natural justice?

Complainant's Requested Value: \$0

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

The roll number under complaint, 200391027, is a sub-account on the Master Roll of the main building account, that being roll number 067027995. This sub-account was previously classified by the City of Calgary as exempt from taxation based on its being occupied by Ambrose University College. Late in 2010, the Respondent realized that the premises had been vacated by the College; they were no longer exempt from taxation; and, accordingly, the Respondent issued the Amended Assessment that brought about this complaint.

Although the Complainant said that he did not know when the premises were vacated by the College, it is clear from the City's Assessment request for Information (ARFI), signed by the landlord or his representative on April 21, 2009, and the attached rent roll, that the premises

were vacant on July 1, 2008. A subsequent ARFI signed on March 26, 2010, along with an attached rent roll, showed that the College's lease expired in August, 2008. This information was contained within the Respondent's disclosure package.

The Complainant argued that the Respondent breached provisions of the Act, specifically: s.305(2) and s.305(3), s.312, s.367 and s.368. It was the Complainant's contention that the City had no authority to issue an amended notice at the end of the taxation year; that the amendment should have been made to the main roll number and that the sub-account should have been cancelled. In proceeding as it did, the Complainant argued, the owner, up until the end of the year, had an expectation of reduced taxes. The amended notice created a liability for which he had no opportunity to budget. As well, since the amendment was made to the sub-account and not to the main roll account, the owner believed himself to be in an advantageous tax position and did not exercise his right to appeal on the merits of the assessment on the main account.

The Complainant stated that, in the interests of procedural fairness and natural justice, this combination of circumstances can only be resolved by the Board reducing the assessment on the sub-account roll number to zero and cancelling that roll number.

The Respondent agreed that an error had occurred in its office in failing to recognize the change in status of the formerly exempt property at an earlier date. Nevertheless, it finally corrected, in accordance with the legislation, the error that had worked to its disadvantage and whether the amendment had been made to the main account or the sub-account, the result would have been the same in terms of the total assessment. The Respondent advised that the sub-account roll number has been cancelled for 2011.

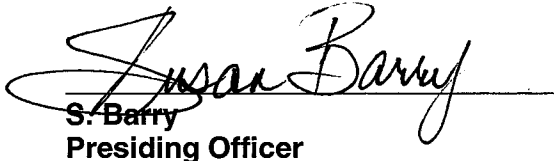
The Board noted that the Complainant does not allege that the property is not assessable; nor does he contend that is exempt from taxation under Part 10 of the Act. Further, the Board noted that, in response to the Complainant's allegations that the roll was amended illegally, in fact the Respondent acted within the parameters of the legislation: it did discover there was an error and it did correct the roll for the current year only (s.305(1)); it did assess the property (s.305(2)) and, when it realized the property had become taxable, it issued an amended assessment notice (s.305(3)). It was agreed that the amended assessment was sent to the assessed person (s.312). S.367 of the Act deals with the liability for tax and does not affect this Complaint. The Respondent did not contravene s.368 of the Act in any respect, in that the amended assessment applied to the entirety of 2010 during which time the premises were not occupied by the College. There is nothing within the legislation that precludes the Respondent from issuing an amended notice at any time within the tax year.

The Complainant was certainly aware that his tax exempt tenants were no longer occupying the premises as early as July of 2008. He received the benefit of that exemption, however, for half of 2008 and all of 2009 even though he was not entitled to it. The Respondent, however tardily, saw the error of its ways and sent an amended assessment notice in accordance with the legislation. The Board could find no evidence of procedural unfairness or denial of natural justice – the opportunity to complain against the assessment on the main account was not denied to the Complainant – and the Board can find no merit in reducing the assessment. The Respondent has already cancelled the sub-account roll number.

Board's Decision:

The 2010 Amended Assessment is confirmed at \$12,350,000.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF September 2011.


S. Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure

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.*