



DECISION WITH REASONS

In the matter of the complaint against the amended 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

6914861 Canada Inc. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

This is a jurisdictional application to the Calgary Assessment Review Board in respect of a complaint filed on an amended 2014 property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	200383487
LOCATION ADDRESS:	33 Heritage Meadows Way SE
FILE NUMBER:	75539
AMMENDED ASSESSMENT:	\$66,410,000

This complaint was heard on 28th day of April, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *B. Neeson, Altus Group*

Appeared on behalf of the Respondent:

- *No one appeared at the hearing*

Appeared on behalf of the Assessment Review Board:

- *No one appeared at the hearing*

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

[1] The Board constituted to hear this matter was a one-member Composite Review Board in accordance with Section 36(1) of Matters Relating to Assessment Complaints Regulation (MRAC). The Complainant did not object to a one-member Board, nor to the composition of the Board that will hear and make a decision on this matter.

[2] The Complainant filed a complaint using the required "Assessment Review Board Complaint" form, and attached an additional typed sheet on Altus letterhead expanding on the grounds for the appeal as referred to in Section 5 of the form (Exhibit C1).

[3] The Calgary Assessment Review Board via letter dated March 20, 2014 (included as page 3, Exhibit C2; or as page 8, Exhibit C3) acknowledged receipt of the 2014 Property Assessment Complaint and filing fee. The Calgary Assessment Review Board noted that the roll number and address that appears at the top of the attachment to Section 5 of the Assessment Review Board Complaint form is not the correct roll number and civic address for the subject property, and did not accept the complaint.

This letter states in part,

"Unfortunately, the Assessment Review Board is unable to hear your complaint, due to the fact that it was not filed in accordance with legislated requirements.

Our records indicate that your complaint did not include the correct information required in section 5 of the complaint form but instead included reasons for a different roll number. Section 460(7) of the Municipal Government Act states that "a complaint 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 value, if the complaint relates to an

assessment. The Assessment Review Board can only hear complaints that were filed in accordance with legislated requirements and your complaint is invalid due to non-compliance. In accordance with Municipal Government Act Section 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)."

[4] The Complainant responded to the March 20, 2014 letter from the Calgary Assessment Review Board (delivered by email) with an email dated March 20, 2014 from Brendan Neeson of the Altus Group to the Calgary Assessment Review Board and presented as page 1-2, Exhibit C2, or page 15-16, Exhibit C3. In this letter, Mr. Neeson acknowledges that the roll number and address that appear on the Section 5 attached page is an error, but that the issues discussed on that attached page are the correct and specific issues for the subject property. Furthermore, the Section 5 attachment page file name is "2014 Grounds 200383487", the correct roll number. The correct roll number and civic address appear on the Assessment Review Board Complaint form. The email requests that the complaint not be dismissed due to a typographic error.

[5] The Calgary Assessment Review Board replied via email dated March 21, 2014 indicating that the option available to the Complainant is to request a jurisdictional hearing before a CARB member (page 1, Exhibit C2). This was apparently done, and a Notice of Jurisdictional Hearing was sent by the Calgary Assessment Review Board dated March 27, 2014, setting the date, time and place for this hearing.

Issues:

[6] Does the complaint, as submitted to the Calgary Assessment Review Board, meet the requirements for a complaint as described in Section 460 of the Act? What is the appropriate remedy?

Board's Decision:

[7] The Board concludes that not accepting the complaint, and therefore denying the taxpayer with an opportunity to appeal the property assessment, is too severe and an unreasonable penalty given the relatively minor error that triggered this matter. The Board concludes that the complaint be reinstated, with the error on the attachment sheet to Section 5 of the Assessment Review Board Complaint form amended to the correct roll number and civic address, and that the complaint be scheduled for a hearing in the normal course to allow all parties adequate time to meet the disclosure requirements in Section 8 of MRAC.

Legislative Authority, Requirements and Considerations:

[8] The authority for the Board to address this matter via a one-member composite assessment review board and to address the issues before this Board is found in Section 36 of MRAC. This section also discuss the scope of the authority of such a board, and states in Section 36(2) "(c) an administrative matter, including, without limitation, an invalid complaint."

[9] Section 460 of the Act describes what a complaint must contain and how it is to be made. Section 460(2) states: "A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any."

Subsection 460(7) reads:

A complaint 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.

[10] The consequences for the failure to file a complaint within the proper time or the failure to comply with the criteria set out in Section 460(7) is set out in Section 467(2), which reads, "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)."

[11] The complaint filing requirements are reiterated in Section 2(1) of MRAC. Failure to comply with Section 2(1) of MRAC results in an invalid complaint that the Board must dismiss, as discussed in Section 2(2) of MRAC, which reads:

- (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.

[12] The Board is also mindful of how the legislation is to be interpreted and applied. The Board notes the conclusion of Madam Justice K.D. Dixon in *Anterra Sunridge Power Centre Ltd. V Calgary (City)*, 2014 ABQB 223 paragraph 88 which states in part; "Procedural rules must serve, not thwart, natural justice. Loss of an appeal on the merits of the taxation decision is a serious consequences."

[13] This direction by Justice Dixon is consistent with the comments made by the Alberta Court of Appeal in its decision on Boardwalk Reit LLP v. Edmonton (City), 2008 ABCA 220. Paragraph 109 reads in part, "...But allowing irrevocable unilateral assessments with no recourse to any tribunal is the largest possible penalty in taxation stature." This decision points out that the aim of an administrative process penalty is compliance, not punishment (paragraphs 146-155). Paragraph 166 reads in part, "For example, what if one page of an answer had been omitted because of an oversight by the taxpayer's clerk, or failure of a computer or photocopier, and could be remedied by an e-mail within minutes? Counsel for the assessor properly conceded that it would not be reasonable for the assessor to object to a complaint against the assessment in those circumstances."

Position of the Parties

Complainant's Position:

[14] The Complainant presented the chronology of the documents in Exhibit C3, and made specific reference to the correct information on the Assessment Review Board Complaint Form, arguing that this constituted a complaint in the "prescribed form". The error (wrong roll number and civic address) on the attachment to Section 5 is not material to the complaint since the reasons in that attachment page address "what information is incorrect and reference to the correct information" (Section 460(7)) and are specific and applicable to the subject property. The requested assessed value of \$21,890,000 is correct and appears on the Assessment Review Board Complaint form. Therefore, the Complainant argued that the complaint complies with Section 460(7) of the Act, and that the complaint should be reinstated.

Respondent's Position:

[15] The Respondent was not represented at the hearing. A package from the Respondent was marked as Exhibit R1. This package includes a short letter from the City of Calgary Assessment Business Unit that states in part, "...as it is the Assessment business unit's [sic] understanding that the complaint was not filed in accordance with these legislative requirements." This letter does not provide any specifics and appears to be an opinion rather than providing any evidence or argument.

Assessment Review Board's Position:

[16] The Assessment Review Board was not represented at the hearing. Documents exchanged with the Complainant were part of the file and either marked as Exhibits or included in Exhibit C3. The position of the Assessment Review Board has been discussed previously.

Board's Reasons for Decision:

[17] The Board acknowledges the submission from the Assessment Business Unit, but puts no weight on this submission, as it provides no facts, perspective or information.

[18] The Board acknowledges that the Assessment Review Board (ARB) is responsible for vetting all complaints to ensure that they comply with the legislation. In situations where the complaint appears to be lacking or inconsistent with the legislation based on the interpretation or standards used by the ARB, the ARB does not accept the complaint. But, the opinion of the ARB is not final, as the taxpayer has the option of a jurisdictional hearing, as occurred on this file. This provides the taxpayer with the opportunity to address the issue of non-compliance with Section 460 of the Act before a member of the Composite Review Board.

[19] In considering the issue, I find that the Assessment Review Board Complaint form was completed accurately, and that the error occurred on the Section 5 attachment page. The electronic file used to transmit this attachment was labelled with the correct roll number and apparently submitted with the subject Assessment Review Board Complaint form. When the file was opened, the error (wrong roll number and civic address) becomes apparent. This caused confusion and resulted in the ARB concluding that the complaint did not comply with the legislation, in their opinion, and was therefore not accepted. While I note the workload of the ARB, and while it is not the role of the ARB to identify and allow for an opportunity to correct these errors, it would seem that this issue could have been addressed with a simple email or phone call.

[20] The inconsistent roll number and address caused confusion, but I do not find that this violated any of the requirements under Section 460(7) of the Act. It would be unfair to deny the taxpayer the opportunity to appeal an assessment when no requirement was clearly violated. Such a penalty is too extreme given the nature of the error.

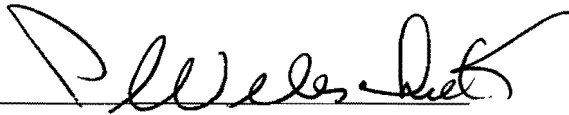
[21] The only remedies presented the Board are to reinstate the complaint, or to dismiss the complaint (concurring with the position of the ARB). Since as discussed above, revoking the taxpayer's right to a hearing to review an assessment is too severe a penalty for a relatively minor error, I conclude that the complaint be reinstated.

[22] In the context of natural justice, does reinstating the complaint adversely impact either the Respondent or Complainant? The complaint form is just the trigger to the complaint process. The substance of the complaint, including evidence to support the factors stated in Section 460(7), is typically provided by the Complainant in their evidentiary disclosure package. It is this disclosure that the Respondent relies on to prepare their evidentiary package. As long as the disclosure period is not affected by the reinstatement, neither the Complainant nor the Respondent is prejudiced by this remedy.

[23] This decision does not absolve or condone inaccurate or sloppy work on the part of parties filing assessment complaints. The intent of the legislation and the process is to provide for timely review of property assessments, and accurate compliance with the legislation and regulations is important and expected.

[24] The Board concludes that the complaint be reinstated, that the errors related to the roll number and civic address contained in the Assessment Review Board Complaint form Section 5 attachment be corrected, and that the complaint be scheduled for a hearing in the normal course, providing adequate time to meet the disclosure requirements contained in Section 8 of MRAC.

DATED AT THE CITY OF CALGARY THIS 1st DAY OF May 2014.



Ivan Weleschuk

Presiding Officer

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

NO.	ITEM
1. C1	Assessment Review Board Complaint form (as submitted by Altus Group)
2. C2	Package of email responses between Calgary Assessment Review Board and Altus Group
3. C3	Complainant Disclosure
4. R1	Respondent 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.*

For MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Jurisdictional		Section 460	