

**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 (MGA).

between:

The Shelburne Group Ltd.; First Calgary Financial Savings & Credit Union Ltd.; Terraventure Developments Ltd.; 2675-36th Street N.E. GP Inc.; Alberta Treasury Branch; Healthcare Properties Holdings Ltd.; Greyhound Lines of Canada Ltd.; Wise Turtle Investments Inc. c/o Kennington Properties Ltd.; Cidex Developments Ltd.; A. Woessner Construction Company Ltd.; 7796528 Canada Inc./ The Great West Life Assurance Company c/o GWL Realty Advisors Inc. In Trust; West Holdings Ltd.; Trafalgar Investments Ltd.; Forte Builders Inc.; Intergulf – Cidex Development (XII) Corp.; Opus Properties Corporation c/o Atlas Property Services Inc.; and Alberta Assets (2006) Inc. (as represented by Altus Group Ltd.), APPLICANTS

and

The City Of Calgary, RESPONDENT

before:

**L. Wood, PRESIDING OFFICER
A. Blake, MEMBER**

This is a jurisdictional application to the Calgary Assessment Review Board in respect of complaints filed on the property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

| Roll Number | Location Address | Assessed Person | Assessment |
|--------------------|-------------------------|---|-------------------|
| 032030405 | 3600 19 ST NE | The Shelburne Group Ltd. | 3,430,000 |
| 032030504 | 3650 19 ST NE | The Shelburne Group Ltd. | 3,340,000 |
| 046199006 | 505 17 AV NE | First Calgary Financial Savings & Credit Union Ltd. | 8,790,000 |
| 048051601 | 2435 22 ST NE | Terraventure Developments Ltd. | 2,950,000 |
| 049002934 | 2675 36 ST NE | 2675-36 th Street N.E. GP Inc. | 10,150,000 |
| 057259707 | 217 16 AV NW | Alberta Treasury Branch | 5,900,000 |
| 060150307 | 1620 29 ST NW | Healthcare Properties Holdings Ltd. | 13,720,000 |
| 066078593 | 850 16 ST SW | Greyhound Lines of Canada Ltd. | 9,010,000 |
| 067036806 | 1104 6 AV SW | Wise Turtle Investments Inc. c/o Kennington Properties Ltd. | 1,880,000 |
| 067085308 | 1002 14 ST SW | Cidex Developments Ltd. | 3,400,000 |

| | | | |
|-----------|------------------------------|--|-------------|
| 068142504 | 1212 1 ST SE | A. Woessner Construction Company Ltd. | 4,350,000 |
| 068229608 | 401R 9 AV SW | 7796528 Canada Inc./ The Great West life Assurance Company c/o GWL Realty Advisors Inc. In Trust | 335,670,000 |
| 075173302 | 4019 17 AV SE | West Holdings Ltd. | 1,310,000 |
| 080055502 | 602 22 AV SW | Trafalgar Investments Ltd. | 1,120,000 |
| 200671923 | 900 10 Discovery Ridge HL SW | Forte Builders Inc. | 2,470,000 |
| 200671931 | 800 10 Discovery Ridge HL SW | Forte Builders Inc. | 2,060,000 |
| 200671949 | 700 10 Discovery Ridge HL SW | Forte Builders Inc. | 1,480,000 |
| 201072709 | 514 16 AV NE | First Calgary Financial Savings & Credit Union Ltd. | 455,500 |
| 201202777 | 1112 9 ST SW | Intergulf – Cidex Development (XII) Corp. | 3,180,000 |
| 201346772 | 1333 32 AV NE | Opus Properties Corporation c/o Atlas Property Services Inc. | 6,100,000 |
| 201355096 | 4705 102 AV SE | Alberta Assets (2006) Inc. | 11,130,000 |

This jurisdictional application was heard on the 9th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Applicant:

- Ms. K. Lilly Agent, Altus Group Ltd.
- Mr. R. Brazzell Agent, Altus Group Ltd.
- Ms. C. Collie Administrative Assistant, Altus Group Ltd.

Appeared on behalf of the Respondent:

- Mr. D. Lidgren Assessor, City of Calgary
- Ms. S. Trilinski Legal Counsel, City of Calgary

Appeared on behalf of the Assessment Review Board:

- Mr. P. Knoll Legal Counsel, Assessment Review Board
- Mr. G. Pastirik Coordinator, Assessment Review Board

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

[1] This application was originally scheduled on June 5th, 2012. At that time, the Respondent had requested a postponement in order to review and respond to the Applicant's submission on this matter. The Applicant did not object to the Respondent's postponement request. The Board agreed to the request and, in consultation with the parties, set the hearing date for July 9th, 2012 and the remaining disclosure dates for the Respondent's disclosure of June 25th and the Applicant's rebuttal's of July 3rd.

[2] At the commencement of this hearing, the Board asked the parties if they had any objection to a two member panel hearing this application, with the risk the panel could become deadlocked. It was noted the side member, Ms. Arlene Blake, would be presiding over a similar application pertaining to the (65) LARB complaints filed by the same Applicant as a one member panel immediately following the CARB hearing. The parties stated they had no objection to the panel composition. It was further noted that the parties' submissions addressed both the CARB and LARB complaints; however, the hearing before the two member panel only considered that portion in the parties' submissions related to the (21) CARB complaints.

[3] The Assessment Review Board's legal counsel, Mr. Pat Knoll, submitted that although the tribunal record does not have to be disclosed, the tribunal does need to know its own record; therefore, he had asked Mr. Greg Pastirik, Coordinator of the ARB, to provide that evidence to the Board. Mr. Knoll spoke briefly with the parties prior to the start of the hearing about Mr. Pastirik's testimonial evidence. Upon that discussion, the parties indicated that Mr. Pastirik's testimony was basically an agreed statement of facts and there was no objection to him presenting this evidence to the Board at the outset of the hearing.

[4] Mr. Pastirik testified that there are 21 CARB complaints before the Board, filed by the Applicant in advance of the complaint deadline of March 5, 2012 with the appropriate filing fees. The Assessment Complaints Agent Authorization (ACAA) forms for each of these complaints were submitted subsequent to the complaint deadline date between March 6th and May 17th, 2012.

[5] Mr. Pastirik testified that he had discussions with the General Chairman of the Assessment Review Board, Mr. Walt Paterson, in regards to the filing requirement of the ACAA forms in advance of the 2012 hearing season. As a result of those discussions, Mr. Pastirik sent an email to several recipients (including the parties before the Board) on January 3, 2012. In that email, he stated that section 51 of *Matters Relating to Assessment Complaints Regulation* AR 310/2009 (MRAC) would be strictly enforced in 2012.

[6] Mr. Pastirik testified that any complaint filed by an agent that did not have the required ACAA form attached was set aside as incomplete for lawful filing and it was not scheduled for a merit hearing.

[7] Further background information was provided by the parties at the commencement of the hearing which included correspondence from the General Chairman. On March 28 and 29, 2012, the General Chairman sent a letter to the Applicant for each of the 21 complaints. He stated the Applicant's complaints were not accompanied with a lawfully completed ACAA form as per section 51 of MRAC. As such, the complaints would not proceed to a merit hearing and the filing fees would be refunded within 45 days from the date of the letters. As a result, the Applicant requested a jurisdictional hearing for the Board to determine this matter.

Issue:

[8] Is a complaint invalid because it was filed by an agent without a completed ACAA form?

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

[9] The Applicant submitted each of the 21 complaint forms and accompanying fees were filed in accordance with the legislative requirements therefore the complaints should proceed to a merit hearing. The Applicant indicated the ACAA form for each of the complaints was submitted to the ARB office subsequent to the complaint deadline date, with the exception of roll number 068229608. The Applicant argued that ACAA form was submitted on March 5, 2012 but the ARB indicated they did not receive it. The Applicant briefly reviewed the evidentiary package which included the complaint forms, assessment notices, filing fees and ACAA forms (including spreadsheets summarizing the same information) which included both the CARB and LARB complaints (Exhibit A1 pages 41 – 565).

[10] The Board notes that the complaints were submitted by the Applicant (in bundles) on March 2, 2012, in advance of the complaint deadline of March 5, 2012. Considering the time to process those complaints, the Board finds the ARB date stamp of March 5, 2012 on each complaint indicates when that complaint was filed. The Board also notes that the Applicant provided a spreadsheet indicating the dates in which the ACAA forms were sent to the ARB. However that information appears to show the dates in which the Applicant received the ACAA form from its client which, in some instances, coincide with the date it was sent to the ARB. The Board has set out the dates in which the Applicant had sent the ACAA form to the ARB based on email correspondence submitted by the Applicant (Exhibit A1 pages 46 – 200). This discrepancy in dates is not prejudicial to either party's position before the Board. The Board summarized that information on the following chart for ease of reference:

| Roll Number | Location Address | Complaint Filed | Filing Fee | ACAA Submitted |
|-------------|---------------------------------|-----------------|------------|----------------|
| 032030405 | 3600 19 ST NE | March 5, 2012 | 525.00 | April 2, 2012 |
| 032030504 | 3650 19 ST NE | March 5, 2012 | 511.00 | April 2, 2012 |
| 046199006 | 505 17 AV NE | March 5, 2012 | 650.00 | March 27, 2012 |
| 048051601 | 2435 22 ST NE | March 5, 2012 | 452.00 | March 15, 2012 |
| 049002934 | 2675 36 ST NE | March 5, 2012 | 650.00 | March 6, 2012 |
| 057259707 | 217 16 AV NW | March 5, 2012 | 650.00 | April 17, 2012 |
| 060150307 | 1620 29 ST NW | March 5, 2012 | 650.00 | May 11, 2012 |
| 066078593 | 850 16 ST SW | March 5, 2012 | 650.00 | March 6, 2012 |
| 067036806 | 1104 6 AV SW | March 5, 2012 | 288.00 | May 29, 2012 |
| 067085308 | 1002 14 ST SW | March 5, 2012 | 521.00 | May 11, 2012 |
| 068142504 | 1212 1 ST SE | March 5, 2012 | 650.00 | March 15, 2012 |
| *068229608 | 401R 9 AV SW | March 5, 2012 | 650.00 | March 5, 2012 |
| 075173302 | 4019 17 AV SE | March 5, 2012 | 200.00 | April 13, 2012 |
| 080055502 | 602 22 AV SW | March 5, 2012 | 65.00 | April 3, 2012 |
| 200671923 | 900 10 Discovery Ridge HL SW | March 5, 2012 | 378.00 | March 27, 2012 |
| 200671931 | 800 10 Discovery Ridge HL SW | March 5, 2012 | 315.00 | March 27, 2012 |
| 200671949 | 700 10 Discovery Ridge HL SW | March 5, 2012 | 226.00 | March 27, 2012 |
| 201072709 | 514 16 AV NE | March 5, 2012 | 69.00 | March 27, 2012 |
| 201202777 | 1112 9 ST SW | March 5, 2012 | 487.00 | May 11, 2012 |
| 201346772 | 1333 32 AV NE | March 5, 2012 | 650.00 | April 3, 2012 |
| 201355096 | 4705 102 AV SE | March 5, 2012 | 650.00 | May 17, 2012 |

Note: The issue regarding this complaint marked with an asterisk (*) is whether the ARB received the ACAA form.

[11] The Applicant set out the legislative provisions which affect this application: sections 460(2) and 460(7) of the MGA and sections 2 and 51 of MRAC (see Appendix "A"). The Applicant submitted the complaints were filed in the prescribed form (Schedule 1), in advance of the complaint deadline of March 5, 2012, with the specified filing fee as per section 460(2) of the MGA. The forms were completed in full and included attachments setting out the reasons for the complaint as per section 460(7). The Applicant argued the statutory requirements for filing an assessment complaint were met in this instance. Moreover, the only provisions of the legislation that identify circumstances where a complaint is invalid are sections 460(2) and 460(7) of the MGA and section 2 of MRAC, which specify that a complaint "in the form" must be filed by the deadline with a specified fee and contain the information set out in section 460(7). The Applicant asserted that he had complied with these legislative requirements.

[12] The Applicant argued the language used in section 51 regarding the filing of the ACAA form is directive as opposed to mandatory (Exhibit A1 pages 24 & 25). The language used in MRAC is not consistent with the language used in the MGA. The word "may" in section 51 of MRAC, is permissive, whereas the word "must" in sections 460(2) and (7) of the Act, is mandatory. Moreover there is no penalty or consequence set out in section 51 if the ACAA form is not simultaneously filed with the complaint form. The Applicant argued this matter could have been addressed at the commencement of a merit hearing as the issue is the completeness of the form versus the filing of the form. As long as the ACAA form is in place at the time of hearing, the complaint is valid and should proceed to a merit hearing.

[13] The Applicant argued the (taxation) legislation must be interpreted in a fair, large and liberal manner. If there is a reasonable doubt as to the meaning of a provision then that provision should be interpreted (or defaults) in favour of the taxpayer (Exhibit A1 pages 14 & 15). The Applicant acknowledged the Board is familiar with statutory interpretation and therefore would briefly address the general principles of interpretation (which for brevity the Board refers to those pages in the Applicant's submission) (Exhibit A1 pages 14 - 25). The Applicant noted the Alberta Court of Appeal decision *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220 in support of its position (*Boardwalk Reit* decision).

CARB Decisions:

[14] The Applicant referred to several Composite Assessment Review Board (CARBs) decisions regarding the requirements for a valid complaint, specifically in regard to the filing of the ACAA form (*The City of Calgary v. Altus Group* J0006/2010-P; *AEC International v. The City of Calgary* J0005/2010-P; *Altus Group Inc. v. Regional Municipality of Wood Buffalo* 0508 004/2010-P and *The City of Calgary v. Colliers International Realty Advisors Inc.* ARB J0009/2010-P). The CARBs have consistently held that an agent's failure to file an ACAA form at the time of filing a complaint is not fatal. The CARBs have found the legislation is silent on the consequences or penalty if the ACAA form is not filed at the same time as the complaint. Moreover, the CARBs have found the failure to simultaneously file an ACAA form with the complaint was a correctable defect (Exhibit A1 pages 27 – 29).

Altus Group Ltd. as a Taxpayer:

[15] The Applicant argued that Altus Group Ltd. has status as a taxpayer because it pays business tax and therefore it is entitled to file a complaint against any of the subject assessments in its own right, in any event, pursuant to section 460(3) of the MGA. The ACAA form is not necessary for the Applicant to file a complaint against any business or property

assessment within the municipality (Exhibit A1 pages 30 & 31).

Decision of the General Chairman:

[16] The Applicant argued that the General Chairman did not have the jurisdiction to make the decision to dismiss the complaints in the letters of March 28 and 29, 2012 (Exhibit A1 pages 35 - 37). Moreover dismissing the complaints is a disproportionate penalty and would offend the principles of natural justice and procedural fairness. In addition, that decision could be perceived as "a chilling effect" in how the Board (and the parties) interpret and apply section 51 in the future and could be seen as fettering the Board's discretion.

Relief Sought:

[17] The Applicant submitted the complaints should be allowed to proceed to a merit hearing otherwise it would be a denial of natural justice and procedural fairness.

The Respondent's Position:

[18] The Respondent submitted that the 21 complaint forms may have been filed on time with the fee, but not with completed ACAA forms. Without the ACAA forms, the complaints are invalid and should be dismissed because they do not comply with the legislative requirements (Exhibit R1 pages 1 – 9). The Respondent set out the legislative provisions in response to this application which included sections 309(1)(c), 460, 461(1), 467 of the MGA and sections 1(1), 2 and 51 of MRAC (see Appendix "A").

[19] The Respondent submitted the timeline to file (annual) property assessment complaints in 2012. The property assessment notices were mailed on Tuesday, January 3, 2012. He noted the deadline to file a complaint was Monday, March 5, 2012 (Exhibit R1 pages 190 - 192). This allowed 61 clear days for an assessed person or taxpayer to file a complaint, one additional day than required by the legislation pursuant to section 309(c) of the MGA.

[20] The Respondent submitted that Altus Group Ltd. was aware of the requirement to file completed ACAA forms with the complaints as it is a realty tax consultant (Exhibit R1 pages 247 – 250). In addition, the Applicant was advised by Mr. Pastirik from the ARB administration via email on January 3, 2012, which was well in advance of the filing deadline of March 5, 2012 (Exhibit R1 page 194). Furthermore there is signage in place at the counter of the ARB office which reiterates the requirement that agents must file ACAA forms with their complaints (Exhibit R1 pages 196 & 197). The Respondent asserted the Applicant's failure to provide signed ACAA forms at the time of filing the complaints was an intentional act and is in direct contravention of the legislation. The Respondent argued that this is analogous to filing a complaint after the filing deadline date: a late complaint will be deemed invalid and must be dismissed by the Board. These complaints without an ACAA form constitutes complaints not made in proper time and therefore should be dismissed (Exhibit R1 page 5).

[21] The Respondent drew the Board's attention to the wording in section 2 of MRAC which makes specific reference to the filing of a complaint in the form set out in Schedule 1 with a fee. The Respondent argued that the consequences of not complying with section 2(1) are clearly set out in section 2(2) which deems the complaint invalid and the assessment review board must dismiss the complaint. The Respondent also drew the Board's attention to the information contained on the regulated form Schedule 1, particularly the "Note" and "Important Notices"

which explicitly state the following (Exhibit R1 pages 180 & 181):

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline or complaints without the required filing fee are invalid.

[22] The Respondent argued that Schedule 1 is part of the regulation and its wording is just as important as the rest of the regulation. The language used in the "Note" is not ambiguous. The Respondent argued if the form and fee must be filed together on or before the complaint deadline date, then it is logical that the ACAA form is filed at the same time.

[23] The Respondent argued that the Applicant's interpretation of the wording in section 51, "may not", is permissive and empowering but there is a distinction between "may" and "may not": "may" which is permissive versus "may not" which is not permissive. The argument that section 51 is directory and not mandatory is devoid of any support. Otherwise it would constitute a loose rule that does not have to be followed. Based on the wording of section 51, the agent cannot file a complaint if he does not have authorization from the assessed person or taxpayer. In this case, the Applicant had no permission to file these complaints on behalf of the assessed person; therefore the complaints are invalid and must be dismissed.

[24] The Respondent argued that natural justice and procedural fairness requires that the legislation be read literally, and not in a manner left open for interpretation; otherwise what is the use of an ACAA form? If the ACAA form can be filed at any time as the Applicant suggests, then this would lower the filing requirements in favour of agents. The Respondent argued that he doubted that this was the intent of the legislators behind section 51 of MRAC.

CARB Decisions:

[25] The Respondent cautioned the Board not to rely on CARB decision 004/2010-P as there were no facts provided in those decisions, and without those facts the Board is unable to determine if the circumstances are similar to the one at hand (Exhibit R1 page 8). The Respondent submitted that he respectfully disagreed with the Board's findings in J0006-2010-P and cannot understand how that Board arrived at its decision based on the legislation as outlined in this case. The Respondent cautioned the Board from relying on J0005/2010-P because the facts are distinguishable from the case at hand. In that case AEC International Inc. had filed a complaint against a property assessment on behalf of 4 tenants within the property and no ACAA form was filed because AEC International Inc. did not know what to do under those circumstances.

Boardwalk Reit decision:

[26] The Respondent argued that the *Boardwalk Reit* decision (referenced by the Applicant) is not applicable in this case as it was in regards to a section 295 application which is not before this Board.

Altus Group Ltd. as a Taxpayer:

[27] The Respondent argued that Altus Group Ltd. is not an assessed person pursuant to section 304 of the MGA but a taxpayer; therefore Altus Group Ltd. would not be able to file complaints on these property assessments without completed ACAA forms.

Decision of the General Chairman:

[28] The Respondent submitted the letters issued by the General Chairman on March 28 and 29, 2012 were a reasonable interpretation of the facts but did not constitute the final decision in this matter.

Conclusion:

[29] Based on the foregoing, the Respondent submitted the complaints are invalid and should be dismissed.

Applicant's Rebuttal:

[30] The Applicant submitted the City of Edmonton's Assessment Review Board does not require the filing of an ACAA form in that municipality. If an agent has the Access Code which is identified on an assessment notice then that is considered a proxy for the Schedule 4 form (Exhibit A2).

Board's Findings & Reasons:

[31] In considering this issue, the Board reviewed specific provisions in the MGA and MRAC that deal with the filing of a complaint with an assessment review board, and for purposes of this analysis focussed solely on those sections which affect this appeal starting with sections 460(2) and (7) of the MGA, which states:

460 (2) 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.

(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.

[32] 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 clearly set out in section 467(2): the assessment review board must dismiss the complaint:

(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).

[33] The facts before the Board are undisputed: the complaints in the prescribed form (Schedule 1) were filed on the March 5, 2012 filing deadline with the appropriate fees. Each complaint contained attachments identifying what information was incorrect on the assessment notice and why, what the correct information should be and what the requested value should be, the merits of which are not before this Board. At this stage in the analysis, the Applicant has satisfied the criteria set out in sections 460(2) and (7) and there is no reason for the Board to dismiss the complaints pursuant to section 467(2) as they were made within the proper time and they have met the criteria set out in section 460(7).

[34] The filing requirements are reiterated in section 2(1) of MRAC which require the completed complaint form (Schedule 1) and the filing fee:

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, and
(b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.

[35] The failure to comply with section 2(1) results in an invalid complaint and the Board must dismiss that complaint as stated in section 2(2) of MRAC:

(2) If a complainant does not comply with subsection (1),
(a) the complaint is invalid, and
(b) the assessment review board must dismiss the complaint.

[36] The issue before the Board concerns the interpretation of section 51 of MRAC in light of the complaint filing requirements:

51 An agent may not file a complaint or act for an assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaints agent authorization form set out in Schedule 4.

[37] Is this complaint invalid because it was filed by an agent without a completed ACAA form at the time the complaint was filed? Does the subsequent filing of the ACAA form after the complaint deadline constitute substantial compliance?

[38] The Board reviewed the "Note" and "Important Notice" contained on the regulated complaint form, Schedule 1, which the Board has reproduced for ease of reference:

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline or complaints without the required filing fee are invalid.

[39] The Board finds neither of these sections makes reference to any authority for the requirement to file the ACAA found within the MGA or the regulations. These sections of the complaint form include the filing of the ACAA form as a mandatory requirement and conclude with a statement that an incomplete complaint, late complaint or a complaint without a filing fee are invalid. They are silent on whether the failure to file the complaint form with a completed ACAA form renders the complaint invalid.

[40] The Board is cautious in regard to speculating about the intent of the legislators as that evidence was not put before the Board. However it could be argued that section 51 was intended to prevent mass filings by agents who did not obtain the consent of an assessed person or taxpayer either at the time of filing the complaint up to (and including) the time of hearing. Furthermore, the Board notes that section 51 is a new provision, one that did not exist prior to 2010 in *Assessment Complaints and Appeals Regulation 238/2000* ("ACAR") so clearly the drafters were trying to clarify issues regarding agency. This concern is obviously shared by the administration of the ARB and the General Chairman who advised the parties that section 51 would be strictly enforced in 2012 (through correspondence, board policies and signage). On an administrative level, the Board appreciates that it is more efficient for notice requirements and scheduling of complaints if the ACAA form is in place before a hearing is scheduled.

[41] Notwithstanding, if the ACAA form must be filed at the same time as the complaint form and filing fee and the failure to do so renders the complaint invalid, then the legislation must clearly and unequivocally state this. The only instruction to file the ACAA form at the same time as the complaint form is contained in the "Note" and "Important Notices" sections of the complaint form found in Schedule 1, as noted above. The Board finds that these notices included in the complaint form are also unclear on the consequences for failure to file the ACAA form with the complaint form: the "Note" in section 3 of the complaint form is silent on consequence; and the "Important Notice" sections refer only to consequence for failure to file a completed complaint form on time with the required filing fee. The Board finds there is no provision in the MGA or MRAC that specifically and clearly states that the ACAA form must be filed at the same time as the complaint form and filing fee, nor are there any consequences set out for the failure to do so.

[42] The Board finds a mandatory requirement to file the ACAA form at the same time as the complaint form ought to be clearly stated and contained within the MGA or the regulations, particularly MRAC. The Board notes that section 51 sets out the requirement to file an ACAA form, however it is silent on when that form must be filed. The reference to a filing requirement (with no consequence) on the complaint form does not, in the Board's view, amount to a clear and unequivocal requirement to file the ACAA at the same time as the complaint form. More

importantly, the Board also finds that there is no authority in the MGA or the regulations for the Board to deem the complaints invalid for the failure to file the ACAA forms at the same time as the complaint forms. Even if the Notice sections within the complaint form were found to be enough authority to require the ACAA to be filed at the same time as the complaint form, the Board finds there is no consequence set out in the Act or the regulations for failure to do so and therefore no authority for the Board to find the complaints invalid.

[43] Any ambiguity in the legislation must be resolved in favour of the assessed person or taxpayer.

Roll Number 068229608:

[44] The Board finds the evidence in regards to whether the ARB had received the ACAA form on March 5, 2012 for roll number 068229608 is inconclusive but not fatal in light of the Board's decision (Exhibit A1 page 111).

Roll Number 201695277:

[45] The Applicant submitted the ACAA form for roll number 201695277 was submitted on March 5, 2012 (Exhibit A1 page 46). However that complaint was not subject to this Application and therefore the Board makes no finding on this issue.

Roll Numbers 68568500 & 68569722:

[46] The Applicant submitted the ACAA forms for roll numbers 68568500 & 68569722 were submitted on March 5, 2012 (Exhibit A1 page 54). However these complaints were not subject to this Application and therefore the Board makes no finding on that issue.

Roll Number 12269353:

[47] The Applicant submitted an unsigned ACAA form was sent to the ARB for roll number 12269353 prior to March 5, 2012. It was subsequently signed on March 10, 2012 (Exhibit A1 page 376). However that complaint is not subject to this Application and therefore the Board makes no finding on this issue. The Board notes it is subject to the LARB jurisdictional hearing.

CARB Decisions:

[48] The Applicant submitted several CARB decisions in which the Board found the failure to file the ACAA form simultaneously with the complaint is not fatal to the complaint being heard. The Board notes the Respondent respectfully disagreed with the decisions of the Board. As the parties are aware, the Board is not bound by other board decisions whereas it is bound by legislation and case - law. Each individual board must make its decision based on the evidence and argument before it. While consistency amongst the boards is the ideal in a quasi judicial setting, it is not always achieved and is largely dependent on the evidence and argument submitted to each board in each case.

[49] While it is arguable the facts of the four CARB decisions could be distinguished from the case at hand, the Board finds the guiding principle from these decisions remains constant: the ACAA form is not required at the time an agent files an assessment complaint in order for the complaint to be valid. The legislation is silent on consequences if the ACAA form is not filed at

the same time as the complaint form. Based upon its review of the legislative requirements to file a complaint with an assessment review board, this Board could not arrive at a different conclusion than that reached by other CARBs. Moreover, given the direction from the courts on similar issues, the Board finds it is reasonable to determine the Applicant has substantially complied with the legislative requirements to file an assessment complaint and the complaints should proceed to a merit hearing.

Decision of the General Chairman:

[50] The Board notes the Applicant's concerns that the General Chairman sent letters indicating that the complaints were not valid without the completed ACAA forms. However, the Board finds this issue is moot given the application was placed before the Board.

Altus Group Ltd. as a Taxpayer:

[51] The Board notes the Applicant's argument that as a taxpayer it has a right to file assessment complaints against the subject properties in any event without the requirement of an ACAA form. The Board finds this was an ancillary argument with little support. Given the lack of argument on that issue from both parties, the Board did not make a finding on that issue.

Board's Decision:

[52] The decision of the Board is to allow the filing of the 21 signed ACAA forms for the subject properties and allow each of the 21 complaints to proceed to a merit hearing, the scheduling of which will be determined by administration in accordance with the legislative requirements.

 DATED AT THE CITY OF CALGARY THIS 23rd DAY OF AUGUST 2012.

Lana J. Wood
Presiding Officer

APPENDIX "A"**LEGISLATION PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****Municipal Government Act****Contents of assessment notice**

309(1) An assessment notice or an amended assessment notice must show the following:

- (a) the same information that is required to be shown on the assessment roll;
- (b) the date the assessment notice or amended assessment notice is sent to the assessed person;
- (c) the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person;
- (d) the name and address of the designated officer with whom a complaint must be filed;
- (e) any other information considered appropriate by the municipality.

(2) An assessment notice may include a number of assessed properties if the same person is the assessed person for all of them.

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) 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.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;
- (b) the name and mailing address of an assessed person or taxpayer;
- (c) an assessment;
- (d) an assessment class;
- (e) an assessment sub-class;
- (f) the type of property;
- (g) the type of improvement;

- (h) school support;
 - (i) whether the property is assessable;
 - (j) whether the property or business is exempt from taxation under Part 10.
- (6) There is no right to make a complaint about any tax rate.
- (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.
- (8) A complaint about a local improvement tax must be made within one year after it is first imposed.
- (8.1) Despite subsection (8), where a local improvement tax rate has been revised under section 403(3), a complaint may be made about the revised local improvement tax whether or not a complaint was made about the tax within the year after it was first imposed.
- (8.2) A complaint under subsection (8.1) must be made within one year after the local improvement tax rate is revised.
- (9) Repealed 1995 c24 s71.
- (10) A complaint must include the mailing address of the complainant if the mailing address of the complainant is different from the address shown on the assessment notice or tax notice.
- (11) An assessment review board has no jurisdiction to deal with a complaint about linear property or an amount set by the Minister under Part 9 as the equalized assessment for a municipality.

Address to which a complaint is sent

- 461(1) A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on that notice.
- (2) On receiving a complaint, the designated officer referred to in section 455 must set a date, time and location for a hearing before an assessment review board in accordance with the regulations.

Decisions of assessment review board

- 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.
- (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).
- (3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
 - (b) the procedures set out in the regulations, and
 - (c) the assessments of similar property or businesses in the same municipality.
- (4) An assessment review board must not alter any assessment of farm land, machinery and equipment or railway property that has been prepared correctly in accordance with the regulations.

Matters Relating to Assessment Complaints Regulation AR 310/09

Definitions

1(1) In this Regulation,

- (a) "Act" means the *Municipal Government Act*;
- (b) "agent" means a person who, for a fee or potential fee, acts for an assessed person or a taxpayer during the assessment complaint process or at a hearing before an assessment review board or the Municipal Government Board;
- (c) "clerk" means the designated officer appointed by a council under section 455 of the Act;
- (d) "complaint" means a complaint under Part 11 or 12 of the Act;
- (e) "complaint form" means,
 - (i) in the case of a complaint to be heard by an assessment review board, the form set out in Schedule 1;
 - (ii) in the case of a complaint to be heard by the Municipal Government Board, the form containing the information referred to in section 19.

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, and
- (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.

(2) If a complainant does not comply with subsection (1),

- (a) the complaint is invalid, and
- (b) the assessment review board must dismiss the complaint.

Agent authorization

51 An agent may not file a complaint or act for an assessed person or taxpayer at a hearing unless the assessed person or taxpayer has prepared and filed with the clerk or administrator an assessment complaints agent Authorization form set out in Schedule 4.

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

| NO. | ITEM |
|------------|---------------------------------|
| 1. A1 | Applicant's Evidence & Argument |
| 2. A2 | Applicant's Rebuttal |
| 3. R1 | Respondent's Evidence |

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 Applicant;*
- (b) an assessed person, other than the Applicant, 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 | Complaint Form Requirements | Agent Authorization | |