



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
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NOTICE OF DECISION NO. 0098 08/11

Altus Group
17327 106A Avenue
Edmonton AB T5S 1M7

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on June 6, 2011, respecting complaints for the following roll numbers:

1007699	1008317	1018035	1033141
1033307	1034321	1034735	1040997
1041003	1066380	1072644	1074715
1074871	1075092	1075126	1075506
1075514	1075605	1075670	1075720
1075746	1075779	1075829	1078070
1103464	1105873	1105899	1105923
1106764	1106772	1107002	1107010
1107796	1107994	1111608	1111632
1111954	1112135	1112259	1112887
1118777	1127745	1128248	1160332
1204528	1212323	1223577	1240324
1251065	1251099	1251123	1251156
1251180	1251305	1283506	1284058
1353077	1443332	1449602	1481506
1501006	1510007	1514603	1522200
1523315	1525724	1525989	1526011
1532506	1533009	1533504	1536408
1542554	1548965	1548999	1549039
1549062	1549112	1550573	1553148
1553205	1553221	1553239	1553700
1553858	1553957	1554005	1554187
1560002	1560044	1560770	1560804
1590272	1595479	1612407	1615251
1618552	2032712	2079804	2079903
2157055	2173201	2173474	2178135
2195105	2195279	2206357	2219087
2219350	2219400	2222180	2228120

2231801	2431005	2433001	2702538
2704179	2704229	2708485	2709459
2710697	2711067	2718393	2719854
2721413	2723591	2742906	2813343
2874006	2950202	2950350	2950707
2950806	2950905	3004959	3005550
3010113	3010154	3013612	3020005
3021649	3022373	3022381	3023520
3024197	3024585	3024593	3027182
3027190	3033784	3034337	3041233
3042504	3042967	3043403	3043957
3044906	3045507	3047354	3047370
3047412	3047420	3054418	3055993
3060175	3068608	3068756	3068905
3069614	3070125	3072105	3072501
3072709	3073012	3082443	3099058
3099215	3099553	3107216	3118528
3118882	3118965	3121522	3124898
3124906	3124914	3127255	3127826
3128006	3130200	3130507	3134509
3147808	3160108	3161056	3163656
3164886	3165289	3165354	3167608
3169703	3169802	3170073	3173630
3185642	3186756	3190550	3190758
3191855	3192606	3192705	3193844
3195708	3196557	3196706	3196805
3197902	3199601	3199908	3200003
3200102	3200201	3200854	3201712
3201720	3201738	3201746	3201753
3201761	3201779	3201787	3201795
3201811	3201829	3201837	3201845
3201852	3201860	3201878	3201886
3201894	3201902	3201910	3201928
3209400	3209608	3218757	3223500
3223609	3224854	3225208	3236155
3242161	3245958	3248507	3268455
3314200	3371754	3399524	3402351
3431731	3487055	3508140	3517380
3517968	3521358	3570405	3571353
3573359	3574100	3574902	3575008
3577004	3577251	3577608	3577707
3577806	3585007	3595535	3630209
3725454	3747151	3747482	3756715
3773587	3778123	3788072	3788239
3801131	3801149	3806494	3811445
3811718	3811726	3814829	3845468

3876448	3877271	3903747	3924230
3928389	3944758	3946100	3946118
4022893	4025771	4026092	4028718
4037198	4037263	4037412	4041125
4046439	4071130	4085106	4112769
4115325	4124061	4132049	4132056
4132064	4132072	4132080	4132122
4143491	4149266	4152476	4202032
4222188	4229993	4232682	4239687
4240768	4243010	4251823	4255832
4259552	4259685	4259966	4276564
4295911	4298444	4298485	4310462
4313557	4537056	4819850	4827655
4845756	4895108	5003009	5088828
6066518	6074256	6291009	6372957
6386239	6411524	6411557	6411599
6411615	6566400	6690994	6759401
6841928	7097611	7097934	7098593
7098619	7098635	7098692	7099153
7100654	7122906	7128655	7138506
7214950	7223712	7223944	7376031
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7811508	7811557	7820228	8015505
8163206	8479875	8480220	8480329
8480410	8480428	8487902	8622904
8627457	8628901	8633638	8633653
8636250	8636375	8636631	8637506
8637639	8637654	8638462	8702789
8703159	8778151	8872558	8873499
8885220	8887770	8888232	8888349
8951469	8953754	8954646	8955403
8956716	8956740	8956773	8970055
8976623	8976979	8978314	8979353
8992158	8993453	9301003	9435546
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9541905	9546326	9547159	9547415
9547621	9547720	9548033	9552787
9552993	9553025	9553090	9554601
9558008	9567538	9567801	9939845
9940102	9940110	9940113	9940400
9941113	9941902	9942036	9942042
9942675	9942698	9943061	9943503
9944678	9945101	9945145	9945146
9945217	9946164	9947120	9947146
9947281	9947840	9947901	9947938
9947942	9947943	9947944	9950482

9950622	9951182	9953678	9953876
9954108	9954292	9956587	9956618
9956619	9957120	9957121	9957528
9957529	9958210	9958516	9960133
9960366	9960586	9960593	9961224
9961244	9961627	9961687	9961935
9964873	9965542	9966518	9966898
9967343	9968021	9968547	9969714
9970744	9971472	9971652	9973955
9974153	9974154	9974225	9975121
9976334	9976627	9976672	9976675
9977025	9977203	9977586	9978452
9978884	9980552	9980553	9980561
9980649	9981060	9983202	9984373
9984538	9985679	9985972	9986580
9986817	9987054	9988183	9988209
9988390	9990051	9991380	9992554
9992612	9992613	9993321	9993390
9993445	9993458	9993459	9993462
9993466	9993469	9993630	9993633
9994009	9994011	9994141	9994143
9994144	9994219	9994240	9994248
9994249	9994250	9994251	9995433
9995438	9995677	10003088	10003485
10003519	10005002	10005224	10005225
10005226	10005439	10005542	10005798
10005821	10005943	10008227	10008264
10010211	10010642	10013223	10014338
10014602	10014604	10014609	10014612
10014615	10014616	10014618	10014623
10014624	10014625	10014628	10014629
10014630	10014631	10014632	10014633
10014636	10014637	10014941	10014942
10015416	10015506	10015908	10016000
10017365	10018592	10018924	10023879
10023880	10025823	10027600	10032856
10033183	10033206	10034817	10035737
10037277	10037330	10039876	10039877
10041217	10041841	10042949	10043192
10043194	10044964	10045285	10045286
10045288	10057051	10057122	10057591
10059147	10059279	10060428	10060757
10064358	10064562	10064564	10064565
10067622	10067707	10068889	10083295
10084084	10085379	10087519	10088498
10092689	10093160	10093161	10093828

10095568	10096665	10097925	10098121
10098122	10125192	10125672	10126673
10126674	10127345	10143127	10157746
10161224	10161899	10164346	10167183
10170507	10170508	10170509	10170510
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10170515	10170516	10170517	10170518
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10170523	10170524	10170525	10170526
10170527	10170528	10170529	10170530
10170531	10170532	10170533	10170534
10170535	10170536	10170537	10170538
10170539	10170540	10170541	10170542
10170543	10170544	10170545	10170546
10170547	10170548	10170549	10170550
10170551	10170552	10170553	10170554
10170555	10170556	10170557	10170558
10170559	10170560	10170561	10170562
10170563	10170564	10170565	10170566
10170567	10170568	10170569	10170570
10170571	10170572	10170573	10170574
10170575	10170576	10170577	10170578
10171620	10173444	10177260	10185075
10202513			

Before:

Lynn Patrick, Presiding Officer
 Brian Frost, Member
 Mary Sheldon, Member

Board Officer: Denis Beaudry

Persons Appearing on Behalf of the Respondent (Complainant):

Anthony Friend, Q.C, on behalf of Altus Group

Persons Appearing on Behalf of the Applicant (Respondent):

Cameron Ashmore, City of Edmonton Law Branch

PRELIMINARY ISSUES

No allegation of bias was raised by any party to the hearing or by any panel member.

At the outset of this preliminary hearing, counsel for Altus Group, the Respondent in the preliminary hearing, raised a preliminary issue for the Board to consider. The Respondent requested that the Board adjourn the preliminary hearing in order that the Respondent could request and obtain materials which it indicated was necessary to properly present its case.

POSITION OF THE RESPONDENT (COMPLAINANT)

In making this request, the Respondent advised the Board that, in his opinion, the Applicant was specifically targeting tax agents in challenging the manner in which those tax agents were presenting the issues in the complaint forms. The Respondent further advised the Board that he believed other complainants were not being challenged in a similar manner and that this was not equitable. In order to substantiate this allegation, the Respondent wished to have access to copies of complaints filed by other taxpayers which had proceeded to a merit hearing between the dates of January 1, 2011, and June 1, 2011. The Respondent wished to review those documents, including submissions and disclosure and the responses of the Applicant, to determine if the Applicant had challenged any of those complaints on the basis of the presentation of issues.

The Respondent submitted to the Board that these documents were in the possession of the Assessment Review Board and requested that the Board order that they be released to the Respondent for review (C-1, pages 1-2). If that were provided, the Respondent indicated that a review could be done expeditiously and that only a brief adjournment of the preliminary hearing would be necessary. In the alternative, the Respondent indicated that an application had been made under the *Freedom of Information and Protection of Privacy Act* (“FOIP”) to gain access to these documents. However, the Respondent advised the Board that this request would take approximately thirty days to fulfil and would therefore necessitate a longer adjournment of the preliminary hearing.

The Respondent directed the Board to the Court of Queen’s Bench of Alberta case of “The City of Edmonton and the City of Edmonton Assessment Review Board and Eco-Industrial Business Park Inc.” (“the Eco case”). The Respondent pointed out to the Board the conclusions of Justice Germain that there must be allowance for the “the proper pursuit of the necessary expertise and that must constitute an exceptional circumstance.”

In summary, the Respondent argued that the information requested was necessary to ensure a fair, complete and comprehensive hearing for the Respondent and that an adjournment of the preliminary hearing should be granted until that information was provided.

POSITION OF THE APPLICANT (RESPONDENT)

The Applicant in this preliminary hearing objected to the adjournment request of the Respondent and advised the Board that, if any request for an adjournment was going to be brought forward,

that should have been done much earlier. All parties had earlier agreed on disclosure dates and hearing dates. Any adjournment at this time would result in an inordinate delay.

The Applicant submitted to the Board that its application in the preliminary hearing would deal solely with the “boiler plate” nature of the issues put forward by the Respondent on the complaint form and argued to the Board that the information requested by the Respondent to be disclosed through a Board order or a FOIP application would not be helpful in dealing with these “boiler plate” issues. The Applicant stated that the Respondent was seeking information concerning the merit hearings that had already proceeded to a merit hearing by June 1, 2011, and that most of these would have been complaints filed by the general public and would not generally involve a “boiler plate” type of issue.

The Applicant disputed that the principles enunciated by Germain J. in the Eco case referenced by the Respondent were applicable in this matter. In the view of the Applicant, the reasons for the request for the disclosure of the information put forward by the Respondent did not constitute “exceptional circumstances” as required for an adjournment or postponement under s. 15 of MRAC and as clarified by Germain J.

The Applicant concluded by submitting to the Board that, whether or not the Board decided that the information requested should be provided to the Respondent, there should not be an adjournment granted of the preliminary hearing.

LEGISLATION

s. 15(1) of the *Matters Relating to Assessment Complaints Regulation*, Alberta Regulation 310/2009 (MRAC), states:

- (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.*
- (2) *A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment as the case may be.*
- (3) *Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.*

DECISION

The decision of the Board is to grant an adjournment of the preliminary hearing to the dates of July, 6, 7, and 8, 2011, at 9 am.

REASONS

During a recess, the Board considered the evidence and submissions and arguments of both parties. The panel considered the request for an adjournment of the preliminary hearing made by the Respondent so that additional information could be gathered to present its case.

In the Board's opinion, the request for additional information that may be necessary for the Respondent to present a full and complete statement of its position is an exceptional circumstance.

The Board then considered the request by the Respondent that the Board should accede to a request for an adjournment and order that the Assessment Review Board provide the information requested by the Respondent.

In the opinion of the Board it is not appropriate for the Board to make such an order to the Assessment Review Board. The proper procedure is for the Respondent to make a FOIP request to gain access to the information.

The Board notes that such a request has been made under FOIP by the Respondent and, in the Board's opinion, that request should run its course.

The Board is of the opinion that the provision of these materials to the Respondent is an "exceptional circumstance" under s. 15 of MRAC and is within principles enunciated in the Eco case decision. It is a matter of fairness and natural justice that the preliminary hearing be adjourned until the FOIP materials are presented to the Respondent so that a fair and complete hearing may be held.

The Board noted the Respondent's submission that the material, once received, could be reviewed quickly. As well, the Board noted the Applicant's objection to an adjournment, particularly an adjournment of any length.

Accordingly, the Board adjourns the preliminary hearing to July 6, 7, and 8, 2011, at 9 am. Any further exchange of materials will be by agreement between the parties to be completed before July 6, 2011. No further disclosure dates will be provided.

This Board Panel is seized with this matter.

Dated this 10th day of June, 2011, at the City of Edmonton, in the Province of Alberta.

Lynn Patrick, Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.
cc: Anthony L. Friend, Q.C.

Cameron Ashmore
Chris Thiessen
Colleen Toma
James Cummins
Jerry Sumka
John Ball
Julia Sproule
Keivan Navidikasmaei
Moreen Skarsen
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