

**NOTICE OF DECISION      NO. 0098 122/12**

Altus Group  
780-10180 101 St NW  
Edmonton, AB T5J 3S4

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 July 30, 2012, respecting a complaint for:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
10014338	4804 55 Avenue NW	Plan: 0325867 Block: 18 Lot: 1	\$20,412,000	Annual New	2012

*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, RSA 2000, c M-26.*

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cc: 5503 50th St & 5522 48th St (ARI) Ltd.

## **Edmonton Composite Assessment Review Board**

**Citation: Altus Group v The City of Edmonton, 2012 ECARB 1299**

**Assessment Roll Number:** 10014338  
**Municipal Address:** 4804 55 Avenue NW  
**Assessment Year:** 2012  
**Assessment Type:** Annual New

Between:

**Altus Group**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF**  
**Lynn Patrick, Presiding Officer**  
**Taras Luciw, Board Member**  
**Tom Eapen, Board Member**

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### **Preliminary Matters**

[1] The Respondent advised that they did not receive the Complainant's disclosure on time. The Respondent received a CD from the Complainant, at least 42 days before the hearing date, however, that CD was blank. Accordingly, the Respondent took the position that a blank CD, no matter what the reason, was not disclosure and thus there was a failure by the Complainant to disclose pursuant to sections 8 and 9 of the *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009 [MRAT] which reads:

8(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,
  - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
  - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

10 (3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

[2] The Complainant argued that disclosure was proper and within the timelines, given the circumstances. The Complainant advised the Board that the CD purporting to be the Complainant's disclosure was submitted to the Respondent on the disclosure deadline. The Complainant provided the Board with a copy of the Rules of Procedure, dated July 29, 2010, which contains an agreement between the Respondent and the Complainant respecting the procedures to be followed by each party when disclosure is electronic.

[3] The Procedures cited by the Complainant contained a term in which the Complainant was required to check the CD's prior to disclosure to ensure that the CD's are accurate. Further, the Respondent was obligated to check the CD within 1 day of its being submitted to the City. The Complainant advised that this did not occur and therefore the Respondent cannot now take issue.

[4] The Complainant submitted that the reference made in the Respondent's disclosure, that "the Respondent did not receive disclosure" was insufficient to put the Complainant on notice that something was wrong with the CD. The Complainant advised the Board that he did not receive notice that the CD was blank from the Respondent, until July 25, 2012. Pursuant to the Procedures, the Complainant then provided paper disclosure to the Respondent on July 26, 2012.

[5] The Respondent argued that the Complainant must not have checked the CD in accordance with the Rules of Procedure prior to disclosing it to the Respondent, but in any event, the Rules of Procedure are not binding upon the Board and the blank CD is not disclosure as required by *MRAC*.

[6] The Board checked the contents of the CD in question, and determined that it was indeed blank.

[7] After considering the evidence and the arguments, the Board decided that the Complainant's evidence was inadmissible.

[8] The Board found that the Complainant failed to provide its disclosure to the Respondent on time, as required by *MRAC*. The Board found a blank CD to be analogous to submitting blank pages as disclosure. The Board also noted that it appears neither party honoured the terms of the Procedures, which required the Complainant to check the CD prior to disclosure, and the Respondent to check the CD within the day afterwards. Regardless, the Board is satisfied that it is incumbent upon the Complainant to ensure that disclosure is provided on time and the Board is not bound by the Rules of Procedure between the parties.

[9] The Board further held that the Complainant's actual disclosure was not disclosed on time, and further that, pursuant to section 9(2) of *MRAC*, it had no authority to hear evidence that was not disclosed properly, unless the receiving party agreed to waive the deadlines in writing as contemplated in *MRAC* section 10(3). Accordingly, the Board had no jurisdiction to abridge the disclosure deadlines to accommodate the Complainant's late filing.

[10] After a brief recess, the matter proceeded to a merit hearing, without the admission of the Complainant's disclosure.

### **Background**

[11] The property is located at 4804 – 55 Avenue NW Edmonton. The 2012 Annual New Assessment is \$20,412,000.

### **Issue**

[12] Is the 2012 Assessment of the subject property correct?

### **Legislation**

[13] The Municipal Government Act reads:

#### ***Municipal Government Act, RSA 2000, c M-26***

s 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.

s 467(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.

### **Position of the Complainant**

[14] In lieu of its disclosure, the Complainant made representations to the Board based upon the content of the Complaint Form. The Complainant argued that the subject property was incorrectly assessed, and should be assessed at \$16,513,500.00.

### **Position of the Respondent**

[15] The Respondent argued that the Complainant failed to meet the onus required of it to prove that the assessment was incorrect.

[16] The Respondent did not submit any evidence in support of its assessment.

[17] The Respondent requested that the 2012 assessment of \$20,412,000 be confirmed as the Complainant has not met the required onus or burden of proof.

### **Decision**

[18] The decision of the Board is to confirm the assessment.

### **Reasons for the Decision**

[19] The Board finds that the Complainant has not provided sufficient evidence to persuade the Board that the 2012 Assessment is incorrect, unfair or inequitable. It is the Complainant's responsibility to cast doubt on the accuracy of the assessment, through evidence highlighting the discrepancy between the subject property's value and other properties in the City. Without such information, the Board is unable to determine whether the assessment is incorrect, and is left with no option but to confirm the assessment.

[20] The Board finds that the Complainant has not met the required onus and therefore the 2012 assessment for the subject property is confirmed.

### **Dissenting Opinion**

[21] There is no dissenting opinion.

Heard commencing July 30, 2012.

Dated this 7 day of August, 2012, at the City of Edmonton, Alberta.

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Lynn Patrick, Presiding Officer

### **Appearances:**

Walid Melham, Altus Group  
for the Complainant

Cam Ashmore, Legal Counsel  
Joel Schmaus, Assessor  
for the Respondent