



## ASSESSMENT REVIEW BOARD

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
Phone: (780) 496-5026

### NOTICE OF DECISION NO. 0098 256/11

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 October 6, 2011, respecting complaints for the following roll numbers:

1007699	3130507	7786809	9994251
1008317	3134509	7810583	9995433
1018035	3147808	7810765	9995438
1033141	3160108	7811508	9995677
1033307	3161056	7811557	10001965
1034321	3163656	7820228	10003088
1034735	3164886	8015505	10003485
1040997	3165289	8163206	10003519
1041003	3165354	8479875	10005002
1066380	3167608	8480220	10005224
1072644	3169703	8480329	10005225
1074715	3169802	8480410	10005226
1074871	3170073	8480428	10005439
1075092	3173630	8487902	10005542
1075126	3185642	8622904	10005798
1075506	3186756	8627457	10005821
1075514	3190550	8628901	10005943
1075605	3190758	8633638	10008227
1075670	3191855	8633653	10008264
1075720	3192606	8636250	10010211
1075746	3192705	8636375	10010642
1075779	3193844	8636631	10013223
1075829	3195708	8637506	10014338
1078070	3196557	8637639	10014602
1103464	3196706	8637654	10014604
1105873	3196805	8638462	10014609
1105899	3197902	8702789	10014612
1105923	3199601	8703159	10014615
1106764	3199908	8778151	10014616
1106772	3200003	8872558	10014618

1107002	3200102	8873499	10014623
1107010	3200201	8885220	10014624
1107796	3200854	8887770	10014625
1107994	3201712	8888232	10014628
1111608	3201720	8888349	10014629
1111632	3201738	8951469	10014630
1111954	3201746	8953754	10014631
1112135	3201753	8954646	10014632
1112259	3201761	8955403	10014633
1112887	3201779	8956716	10014636
1118777	3201787	8956740	10014637
1127745	3201795	8956773	10014941
1128248	3201811	8970055	10014942
1160332	3201829	8976623	10015416
1204528	3201837	8976979	10015506
1212323	3201845	8978314	10015908
1223577	3201852	8979353	10016000
1240324	3201860	8992158	10017365
1251065	3201878	8993453	10018592
1251099	3201886	9301003	10018924
1251123	3201894	9435546	10023880
1251156	3201902	9509662	10025823
1251180	3201910	9538000	10027600
1251305	3201928	9538109	10032856
1283506	3209400	9541103	10033183
1284058	3209608	9541905	10033206
1353077	3218757	9546326	10034817
1443332	3223500	9547159	10035737
1449602	3223609	9547415	10037277
1481506	3224854	9547621	10037330
1501006	3225208	9547720	10039876
1510007	3236155	9548033	10039877
1514603	3242161	9552787	10041217
1522200	3245958	9552993	10041841
1523315	3248507	9553025	10042949
1525724	3268455	9553090	10043192
1525989	3314200	9554601	10043194
1526011	3371754	9558008	10044964
1532506	3399524	9567538	10045285
1533009	3402351	9567801	10045286
1533504	3431731	9939845	10045288
1536408	3487055	9940102	10057051
1542554	3508140	9940110	10057122
1548965	3517380	9940113	10057591
1548999	3517968	9940400	10059147
1549039	3521358	9941113	10059279
1549062	3570405	9941902	10060428
1549112	3571353	9942036	10060757
1550573	3573359	9942042	10064358
1553148	3574100	9942675	10064562

1553205	3574902	9942698	10064564
1553221	3575008	9943061	10064565
1553239	3577004	9943503	10067622
1553700	3577251	9944678	10067707
1553858	3577608	9945101	10068889
1553957	3577707	9945145	10083295
1554005	3577806	9945146	10084084
1554187	3585007	9945217	10085379
1560002	3595535	9946164	10087519
1560044	3630209	9947120	10088498
1560770	3725454	9947146	10092689
1560804	3747151	9947281	10093160
1590272	3747482	9947840	10093161
1595479	3756715	9947901	10093828
1612407	3773587	9947938	10095568
1615251	3778123	9947942	10096665
1618552	3788072	9947943	10097925
2032712	3788239	9947944	10098121
2079804	3801131	9950482	10098122
2079903	3801149	9950622	10125192
2157055	3806494	9951182	10125672
2173201	3811445	9953678	10126673
2173474	3811718	9953876	10126674
2178135	3811726	9954108	10127345
2195105	3814829	9954292	10143127
2195279	3845468	9956587	10157746
2206357	3876448	9956618	10161224
2219087	3877271	9956619	10161899
2219350	3903747	9957120	10164346
2219400	3924230	9957121	10167183
2222180	3928389	9957528	10171620
2228120	3944758	9957529	10173444
2231801	3946100	9958210	10177260
2431005	3946118	9958516	10185075
2433001	4022893	9960133	10202513
2702538	4025771	9960366	
2704179	4026092	9960586	
2704229	4028718	9960593	
2708485	4037198	9961224	
2709459	4037263	9961244	
2710697	4037412	9961627	
2711067	4041125	9961687	
2718393	4046439	9961935	
2719854	4071130	9964873	
2721413	4085106	9965542	
2723591	4112769	9966518	
2742906	4115325	9966898	
2813343	4124061	9967343	
2874006	4132049	9968021	
2950350	4132056	9968547	

2950707	4132064	9969714
2950806	4132072	9970744
2950905	4132122	9971652
3004959	4143491	9973955
3005550	4149266	9974153
3010113	4152476	9974154
3010154	4202032	9974225
3013612	4222188	9975121
3020005	4229993	9976334
3021649	4232682	9976627
3022373	4239687	9976672
3022381	4240768	9976675
3023520	4243010	9977025
3024197	4251823	9977203
3024585	4255832	9977586
3024593	4259552	9978452
3027182	4259685	9978884
3027190	4259966	9980552
3033784	4276564	9980553
3034337	4295911	9980561
3041233	4298444	9980649
3042504	4298485	9981060
3042967	4310462	9983202
3043403	4313557	9984373
3043957	4537056	9984538
3045507	4819850	9985679
3047354	4827655	9985972
3047370	4845756	9986580
3047412	4895108	9986817
3047420	5003009	9987054
3054418	5088828	9988183
3055993	6066518	9988209
3060175	6074256	9988390
3068608	6291009	9990051
3068756	6372957	9991380
3068905	6386239	9992554
3069614	6411524	9992612
3070125	6411557	9992613
3072105	6411599	9993321
3072501	6411615	9993390
3072709	6566400	9993445
3073012	6690994	9993458
3082443	6759401	9993459
3099058	6841928	9993462
3099215	7097611	9993466
3099553	7097934	9993469
3107216	7098593	9993630
3118528	7098619	9993633
3118882	7098635	9994009
3118965	7098692	9994011

3121522	7099153	9994141
3124898	7100654	9994143
3124906	7122906	9994144
3124914	7128655	9994219
3127255	7138506	9994240
3127826	7214950	9994248
3128006	7223712	9994249
3130200	7223944	9994250
	7376031	

**Before:**

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

**Board Officer:** Segun Kaffo

**Persons Appearing on behalf of Applicant (Respondent):**

Cameron Ashmore  
 Steve Lutes  
 Moreen Skarsen  
 Colleen Toma  
 Doug McLennan  
 James Cummins  
 Tim Dmytruk  
 John Ball  
 Will Osborne  
 Jerry Sumka

**Persons Appearing on behalf of Respondent (Complainant):**

John Trelford  
 Robert Brazzell  
 Chris Buchanan  
 Doah Ozum  
 Karen P. Lilly  
 Stephanie Wanke

## **OVERVIEW**

The City of Edmonton has brought forward a request that the CARB review 812 complaints filed by various complainants by their agent Altus Group, in order to determine if they comply with Section 460 of the Act and Section 2 of MRAC.

## **BACKGROUND**

Complaints respecting the assessments made by the City of Edmonton for the 2011 tax year were filed with the City of Edmonton Assessment Review Board by March 14, 2011 for the above listed properties listed.

In each of the 812 complaints filed by Altus on the complaint form, a document entitled Schedule A was attached and referred to in Section 5 of the complaint form. The following is the content of Schedule A:

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## Schedule A to each Altus Complaint is Necessary

### SCHEDULE A

#### \*Common Issues – Legislative 1-3

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality, and physical condition attributed by the municipality to the subject property are incorrect, inequitable and do not satisfy the requirement of Section 289 (2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

#### \*Common Issues – All Property Types 4-7

4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality with regards to the assessment roll was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, nor correct.

Please note: All the evidence supporting the issues/grounds will be provided in accordance with the legislation (42 days prior to the hearing) and after further investigation, or a satisfactory response from the assessment department, some of these issues may be resolved prior to a hearing.

In approximately 80% of the 812 complaints filed, Schedule A was the only information supplied in response to provisions of Section 5 of the complaint form. In the remaining

complaints filed by The Complainant Altus, there were various other responses supplied expressed to be in addition to Schedule A and were from a list of 26 items appearing in a document entitled "Appeal Grounds Utilized in Addition to "A" as follows:

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### Appeal Grounds Utilized in Addition to "A"

In addition to Schedule A:

1. The municipality has failed to account for various elements of physical, economic and/or functional obsolescence.
2. The municipality has utilized the incorrect income parameters in determining the value of the subject.
3. The assessment has incorrectly and inequitably failed to account for expenses associated with parking revenue and vacancy.
4. The costs associated with achieving full market rent have not been taken into account.
5. The subject property has an associated roll number(s) and the value should be removed from the subject assessment.
6. The municipality has failed to recognize the tax-exempt status of one or more tenants of the subject property based on the definitions outlined in Section 362 and 364 of the MGA or recognize all exemptions within the property.
7. The assessor has incorrectly applied an effective zoning to the subject property.
8. The assessor has failed to correctly account for the farm status of the subject property.
9. The impact of environmental remediation costs and associated stigmas have not been adequately captured in the assessed value.
10. The subject property has the incorrect residential/non-residential tax split.
11. The time adjusted sale price is lower than the assessed value.
12. The subject has chronic vacancy.
13. The assessor has incorrectly applied an arterial location to the subject property when in fact it is in an interior location.
14. Time Adjusted Comparable Sales indicate a lower market value.
15. The property is a walkway, equity comparables show a lower value.
16. The property does not comply with the zoning requirement (while it is very unclear why this is an issue or ground, the City will give the property owner the benefit of the doubt that this will somehow affect value).
17. The municipality has incorrectly assessed the unit as a Condominium Hi- Rise Rental. The unit should be assessed as a Condominium Walk-Up Unit.



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### Appeal Grounds Utilized in Addition to "A"

18. The property according to the zoning can never be more than a parking lot for the building with a view point.
19. There is a mathematical error in the calculation of the assessment.
20. The assessor has incorrectly calculated the area of the subject property.
21. The excess land should be reduced.
22. The appraised value is lower than the current assessment.
23. Similar properties have assessments based on land leases.
24. The municipality has utilized the incorrect valuation method in determining the value of the subject.
25. Various unique issues to hotels.
26. The subject property has the incorrect mill rate split.

The Applicant seeks to have the CARB dismiss all the complaints which provided Schedule A only, on the basis of non compliance with provisions of Section 460 of the Municipal Government Act (MGA) and with the provisions of Section 2 of Alberta Regulation 310/2009, which is Matters Relating To Assessment Complaints Regulation (MRAC), and to bar the complaints in certain cases even though additional matters were brought to the responses to the provisions of Section 5 of the form. The Respondent also seeks to partially bar the complaints in

another group of complaints in which in addition to Schedule A there are matters in the Section 5 responses that the Respondent does not place in the non-compliance category.

### **ISSUE(S)**

1. Does the fact that an agent authorization form is not signed invalidate the complaint?
2. Does a complaint form submitted electronically require a signature in order to be valid?
3. Is the information that can be accessed electronically by a password located on the assessment notice incorporated by reference into that assessment notice?
4. Does the Complaint Form containing a Schedule A, (“boilerplate” or generic list of issues), comply with the requirements of the legislation?
5. With respect to a Complaint Form containing items in addition to Schedule A, is that Complaint Form entirely or partially invalid in the events the requirements of the legislation are not fulfilled?

**In this preliminary hearing, the Applicant is the City of Edmonton, (the Respondent in the underlying complaints) and the Respondent is Altus Group, (the Complainant in the underlying complaints). For ease of reference, in this decision the City of Edmonton will be referred to as the “Respondent” and Altus Group will be referred to as the “Complainant”.**

### **POSITION OF THE RESPONDENT**

With respect to issue #1, the Respondent argued that the legislation under s. 51 *MRAC* provides that an agent may not file a complaint nor act for an assessed person unless the assessed person or taxpayer has prepared and filed with the clerk an assessment complaints agent authorization form. The Respondent noted that many of the complaint forms filed by the Complainant did not include a signed agent authorization form. However, the Respondent advised the CARB that prior to this hearing, the Complainant had either obtained signed agent authorization forms or the complaints had been withdrawn. Accordingly, the Respondent advised that issue #1 has now been resolved.

With respect to issue #2, the Respondent noted for the CARB that the online filing system of complaints allowed for complaints to be filed without a signature. The Respondent advised the CARB that while there are no legislative provisions which require that the complaint be signed, there are valid policy reasons for requiring a signature on the complaint form and requested the CARB to rule on the question of the validity of an unsigned complaint form filed electronically.

With respect to issue #3, the Respondent noted that an assessment notice contains a password which allows the property owner access to more information concerning the assessment. Witnesses for the Respondent gave evidence as to what information can be accessed by this password. The Respondent requests an order from the CARB that this information that can be accessed by the password be incorporated by reference into the assessment notice.

With respect to issue #4, the Respondent submitted to the CARB that this was an issue of major importance. The Respondent argued that the generic or “boilerplate” form of Schedule “A” attached by the Complainant to the complaint forms is not specific enough to allow the Respondent to identify clearly the issues and grounds relating to a specific property. The Respondent pointed the CARB to the provisions of s 460(7) *Municipal Government Act* and s 2 *Matters Relating to Assessment Complaints Regulation*. The Respondent argued that the generic form of Schedule “A” does not indicate the relevant issues for a specific property. The Respondent argued further that it was unable from this “Schedule A” to identify the issues and grounds specific to each complaint and thus begin preparation for a merit hearing in advance of receiving disclosure. The Respondent advised the CARB that, in its opinion, the intent of the legislation was to provide a more efficient procedure for the assessment complaint process and provided excerpts from Hansard delineating discussions in the legislature leading up to the passage of the legislation, as well as excerpts from various Government of Alberta pamphlets containing instructions on completing the complaint form. The Respondent submitted to the CARB that the Complainant was altering the intent of the legislation by using the “boilerplate” Schedule “A” attached to the complaint form. This Schedule “A”, in the opinion of the Respondent, made the complaint form merely a “placeholder” with the issues and grounds specific to the property to be identified at disclosure.

With respect to issue #5, the Respondent submitted to the CARB that many of the complaint forms submitted by the Complainant were defective in that they did not comply with the provisions of s 460(7) ( c ) *MGA*. The Respondent indicated to the CARB as an example that if an issue such as “exemptions,” or “residential/non-residential split” or “incorrect mill rate split” is mentioned, the other information requested in s 460(7) must be provided by the complainant on the complaint form. These requirements include an explanation of why the information on the assessment notice is incorrect, what the correct information is and identification of the requested value.

With respect to issues #4 and #5, the Respondent provided the CARB a list of all the properties for which complaints had been filed by the Complainant with the attached Schedule “A” sorted by inventory. The Respondent noted on these lists which properties had issues extra to Schedule “A” listed and which of these properties with extra issues should be allowed to proceed to merit (1Ap, pages 11-54). The Respondent argued that the complaint forms for some of the properties with extra issues noted did not comply with s. 460(7)(c) *MGA*, and should therefore be dismissed. The Respondent noted on these lists that some properties with extra issues listed were, in the opinion of the Respondent, minimally compliant with the Act and associated regulations with respect to the information provided on the complaint forms and could proceed to a merit hearing on those minimally compliant issues.

The Respondent reminded the CARB that s. 467(2) *MGA* states that 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) *MGA* and that the word “must” is mandatory.

The Respondent requested that the CARB dismiss all the complaints which had only Schedule “A” attached for failing to raise issues and grounds on a site specific basis. With respect to other complaint forms which had Schedule “A” attached and also listed some extra issues, the Respondent requested that the CARB dismiss the Schedule “A” and, of the extra issues, only allow to proceed to a merit hearing those which the Respondent had deemed to be minimally compliant with the legislation. The Respondent requests that all the other issues it identified as non-compliant be dismissed.

During the course of its argument, the Respondent argued that its application did not unfairly target tax agents but that these agents are being held to the same standard as other property owners in that they must comply with the legislation.

The Respondent opposed the position held by the Complainant that the discussions between the Complainant and the administration of the Assessment Review Board, relating to the establishment of the electronic filing system, and the possibility of attaching a schedule of issues fell within the boundaries of the doctrine of legitimate expectation. In the opinion of the Respondent, these discussions in no way formed a substantive promise or an undertaking concerning the validity of a schedule of issues.

## **POSITION OF THE COMPLAINANT**

It is the position of “The Complainant”, (Altus Group Limited et al), that the CARB proceed to determine each of the complaints on their merits.

As to Issue #1, they have complied with Edmonton ARB directives in submitting Assessment Complaint Authorization Forms, (ACAA) electronically without signature. Notwithstanding the question of validity vis-a-vis lack of signature, all forms have now been signed rendering this item moot.

As to Issue #2, they have complied with Edmonton ARB directives in submitting Complaint Forms electronically without signature. Notwithstanding the question of validity vis-a-vis lack of signature, they are prepared to sign all forms at the beginning of the hearing if so directed.

As to Issue #3, the Complainant confirmed that the password-accessed City of Edmonton assessment web site is of some value in preparing their appeals. However, the information is at best only somewhat reliable and is subject to error and exclusion, particularly regarding information relating to exemptions, multi-family residential calculations and special purpose properties.

As to Issues #4 and #5, they have complied with Section 460(7) of the *Municipal Government Act*, (MGA) and Section 2 of *Matters Relating to Assessment Complaints Regulation*, (MRAC).

The complaints were duly submitted with the requisite fee. Further, all complaints followed form as described in Section 460(7) of the MGA inasmuch as appropriate boxes were checked or completed including what information is incorrect (in the form of a schedule itemizing common issues and grounds, at least one of which is a triable issue under the complaint). Where only a Schedule A was provided and where Section 5 of the complaint form was further completed, the issues or reasons were further articulated. That Schedule A is deemed “boilerplate” (standardized text) and is common to all Complaints should not be precluded as nothing in law does so. Various ARB and Court decisions were submitted in support.

Any ambiguity in the applicable legislation Section 460(7) and Section 2 (MRAC) should be resolved in favor of the Complainant on the basis that it should be interpreted in such a way as to allow for attainment of its objects. A fair interpretation of the MGA and MRAC requires that the ARB assess the merits of each complaint, in the circumstances where the Complainant has provided all information required by legislation, as is the case in provision of a Schedule A for each of these complaints.

Further, the Complaints were prepared and filed in collaboration with and under direction of the ARB during discussions leaning towards streamlining an on line application process. The ARB asked the Complainant to consolidate common issues into a separate schedule and to isolate and include in section 5 of the form only issues that go outside of, or are in addition to, Schedule A.

The Principles of Natural Justice and Procedural Fairness require that the Complaints should not be dismissed. Under *Boardwalk REIT v. City of Edmonton*, this was no better illustrated wherein it was stated that the Board’s summary dismissals... due to information not provided by the Complainant were unreasonable, and violated the administrative law principles of natural justice and procedural fairness, as well as the MGA itself. In the present case, the Complainant has provided all material needed by the ARB to assess the complaints and has fully completed the forms. The Complainant further submitted similar findings in *Royal Bank of Canada v. Regina (City) Board of Revision* and *Canadian Tire Corp v. Regina (City) Board of Revision*.

Under FOIPP, the Complainant obtained from the Edmonton ARB copies of all Local and Composite Assessment Review Boards complaints heard between Jan 1 and June 1, 2011. Several examples of those forms were exhibited, all of which evidenced minimal basic completion of the Complaint Form, which in the opinion of the Complainant likely offered less detail than the Complainant’s Schedule A, yet they were deemed acceptable. This brought to question whether the City had in fact singled out Altus, as well as other agents, unfairly.

## **LEGISLATION**

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

***s. 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,***

***(a) apply the valuation and other standards set out in the regulations, and***

***(b) follow the procedures set out in the regulations.***

*s. 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.*

*s. 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).*

***Matters Relating To Assessment Complaints Regulation AR 310/2009;***

*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.*

*9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*

## **Section 5 — Reason(s) for Complaint**

*The reasons for a complaint must accompany the complaint form, including:*

- *what information shown on an assessment notice or tax notice is incorrect;*
- *in what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues;*
- *what the correct information is;*
- *if the complaint relates to an assessment, the requested assessed value.*

## **DECISION**

With respect to issue #1, the CARB notes that the parties advised that they have resolved this issue and that no decision on this matter is required.

With respect to issue #2, the decision of this CARB is that an actual signature on a complaint form filed electronically is not required.

With respect to issue #3, the CARB has concluded that the electronic information accessible to an assessed person through a password on the assessment notice is not incorporated by reference into the assessment notice.

With respect to issue #4, the CARB denies the application of the Respondent to dismiss Schedule “A” to the complaint forms.

With respect to issue #5, the CARB denies the application of the Respondent to declare the complaint forms it identified as containing issues non-compliant with s. 460(7)(c ) invalid.

## **REASONS**

With respect to issue # 1, the CARB makes no comment as the parties advised during the hearing that this was now a non-issue since the complaints lacking agent authorization forms have now either been withdrawn, or have provided such signed agent forms.

With respect to issue #2, the CARB is of the opinion that a physical signature is not required for a complaint form which is submitted electronically to be valid. Although there may be valid policy reasons for requesting a physical signature by a complainant – such as confirming the identity of the individual completing the complaint-- the legislation does not provide any

requirement for a signature on the complaint form. The presence of a signature line on the complaint form is not enough to make the completion of such signature line a requirement.

With respect to issue # 3, the CARB concludes that the information accessible by a password on an assessment notice is not incorporated by reference into the assessment notice itself. The CARB is mindful of the fact that not all citizens have a computer nor are computer literate. The CARB is of the opinion that the password access is merely a convenient way for citizens to access information concerning their assessment. The CARB also notes that evidence given by witnesses at the hearing indicated that not all information used to prepare an assessment is accessible by that password.

Issue #4 is a matter of major concern for the parties. The CARB notes the submissions of the Respondent the intent of the legislature in implementing the new complaint appeal process was efficiency and expediency for all parties. In the opinion of the Respondent, a complainant must fulfill the requirements of s. 460 *MGA* in sufficient detail and completeness concerning the information specific to that property, so that the Respondent can know the case to be met concerning that file from the time the complaint form is received, and thus begin preparing for the merit hearing in a timely fashion. The Respondent has argued that these requirements are reiterated in the regulations and on the mandated complaint form. The Respondent's position is that this clarity on the complaint form is what the legislature intended and that non-compliance with these requirements frustrates the intent of the legislation.

The CARB agrees that it would be ideal for the Respondent to have such clarity on the complaint form such that every complaint form complies exactly with the legislation. However, the CARB is of the opinion that there is one standard that should be applied to all property owners filing a complaint, whether they be professional agents or unsophisticated owners inexperienced with the complaint process. The CARB notes the submissions of the Respondent that the legislation requires that if a complaint does not comply with the requirements of the form, the complaint is invalid and the assessment review board has no choice but to dismiss the complaint. However, the CARB does not believe that strict, technical compliance is necessary as this is beyond the ability of many complainants and that to dismiss their complaints on technical grounds would neither be fair nor equitable, and would be rating process higher than the substantive rights of property owners. Justice Cote remarked in *Boardwalk REIT LLP v. City of Edmonton and Municipal Government Board* 2008 ABCA 220 paragraph 78 "Where an Act can be construed more than one way, the Court must reject any alternative which is manifestly absurd or extremely harsh, unjust or capricious". The Respondent had submitted to the CARB that the insistence on the completeness of the complaint form arose from the concern that the Respondent would not know the case to be met at the Merit hearing. In the CARB's opinion this concern is allayed by the disclosure process guaranteed in the Legislation.

In addition, with respect to Schedule "A", the CARB notes the requirement of the legislation that on box 4 of the complaint form a "matter" for complaint must be checked and that this seems to mirror the wording, with some changes, of s. 460(5) *MGA*. The next requirement according to s. 460 *MGA* and box 5 of the complaint form is that an issue or reason for that complaint must be given and supported. Box 5 of the complaint form contains the word "including" which indicates to this CARB that there must be at least one issue or reason and ground on the



complaint form although other extraneous items could be present as well. The CARB has inspected "Schedule "A" and notes that equity is present as an express issue and the unfairness and inequity of the assessment as compared with other properties is present as a ground. Schedule A also raises the requirement of the assessor to satisfy Section 293 of the Act in regards to carrying out the assessment in a fair and equitable manner. This is common to all assessments of properties. In this regard, Schedule "A" does comply sufficiently with the legislation. There could be other examples as well where the information on the generic Schedule "A" does comply sufficiently with the legislation with respect to a specific property. The CARB concedes that these issues and grounds might apply to a specific property more by accident than by design and that the site specific information is not as clear as the Respondent would like. However, as noted above, the standard for compliance with the legislation is not high and the CARB notes several examples of complaint forms accepted for a merit hearing by the Respondent which demonstrated only the most rudimentary attempt at compliance with the requirements of the legislation. For these reasons, this CARB is unwilling to declare Schedule "A" as non-compliant with the legislation and thus force the wholesale dismissal of many complaints. The CARB was provided an extract from D. Jones and A. de Villars *The Principles of Administrative Law* which stated that the greater the importance of the decision to the individual or the individuals, the more stringent the procedural protection should be. In the opinion of the CARB this should be interpreted to allow latitude in procedure in order that an individual's rights are not negated.

As an aside, the parties requested during the hearing that the CARB clarify the terms used in the legislation such as "matters," "issues", "reasons", "grounds." The CARB's opinion is that the only term which is defined is "matters". This is referred to in s. 460(5) *MGA* as being the ten items on the assessment notice about which a property owner could complain. In the regulations and other documentation produced by other bodies concerning completion of the complaint form, the terms "matters," "issues" "grounds" and "reasons" are used in a confusing and inconsistent manner. In the opinion of this CARB, the *MGA* is the prevailing legislation and so the terms "matters" will refer to the definition contained therein. The same wording for "matters", with some variation, appears on the mandated complaint form in section 4. In the absence of a clear definition of the other terms, this CARB is of the opinion that the "issues" and "grounds" or "reasons" refer to the information to be provided pursuant to s 460(7) *MGA* and s. 5 of the mandated complaint form.

In summary, this CARB concludes that Schedule "A" attached to the complaint forms contains sufficient information, albeit in an oblique manner, to comply minimally with the requirements of the legislation.

With respect to issue #5, the CARB's conclusions are similar to those for issue #4. The Respondent had provided for the CARB's consideration a lengthy list of the underlying complaints detailing those which had issues extra to Schedule "A" noted thereon and indicating the Respondent's opinion as to which of those complaints had sufficient information on those extra issues to comply with the requirements of s. 460(7) (c ). The CARB notes that there are some defects in the amount of information provided with respect to those extra issues. However, as above, the standard is one of sufficient compliance as set out in "Boardwalk" and a standard to

be applied to all complainants, although the Respondent might wish that the Complainant would give more attention to detail and completeness.

With respect to the complaint forms which listed items in addition to the items listed in Schedule A, the CARB has reviewed these forms as requested by the Respondent. The CARB had been supplied by the Respondent with a list of all the complaints filed by the Complainant. This list detailed the complaints which had only Schedule “A” attached, as well as those which had some extra issues noted in addition to Schedule “A”. The CARB was not provided with the assessment notices which relate to these complaints with the issues extra to Schedule “A” nor was the CARB provided with the file and evidence relating to the complaint. The CARB undertook a cursory review of the CD (3Ap) as provided by The City which provided copies of completed Complaint Forms, Schedule(s) and Agent Authorization Forms for all the roll numbers under this complaint, and is of the opinion that it was not in possession of sufficient information to accept or reject the determination of the Respondent of the compliance of those files with extra issues listed on the complaint form with the requirements of the legislation.

Finally, the CARB addressed its mind to the submission of the Complainant that the discussions regarding electronic filing between the Complainant and the administration of the assessment review board amounted to a legitimate expectation on the part of the Complainant that the contemplated list of issues to be filed electronically would be accepted as valid. The CARB does not accept this submission. There was no undertaking given nor could there be any expectation that this could be a reasonable or substantive right to be given according to the principles set out in Sara Baker’s *Administrative Law in Canada* (2A(p) Tab 2, p 127).

The Board believes that the interpretation of the intent of the Legislature was best expressed by Mr. Danyluk and reported in Hansard, “Based on our review I believe the changes (to the legislation) that we are recommending are necessary to provide taxpayers with the understandable, objective and fair complaint and appeal system they deserve.”

With respect to issue#4 and issue #5, the CARB directs that the underlying complaints proceed to a hearing on the merits.

Dated this 20<sup>th</sup> day of October, 2011, at the City of Edmonton, in the Province of Alberta.

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Lynn Patrick, Presiding Officer

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*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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