



ASSESSMENT REVIEW BOARD

Churchill Building
10019 103 Avenue
Edmonton AB T5J 0G9
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NOTICE OF DECISION 0098 377/11

Alberta Property Tax & Assessment Solutions
397-52471 RR 223
Sherwood Park AB T8A 4P9

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 cost hearing held on November 29, 2011, respecting 2011 assessment complaints on the following roll numbers:

Roll Number	Municipal Address	Legal Description	Assessment Type
9940905	18203 105 Ave NW	Plan:9623416 Block: 1 Lot: 9	Annual New
3183340	9810 105 St NW	Plan: NB Block: 5 Lot: 93 – 96	Annual New
4313532	9950 90 Ave NW	Plan: I24A Block: 124 Lot: 1 – 6	Annual New
1008770	18010 105 Ave NW	Plan: 7214KS Lot: 2	Annual New
8975831	9150 34 Ave NW	Plan: 7821552 Block: 10 Lot: 7	Annual New
4150439	17865 106 Ave NW	Plan: 9021894 Block: 3 Lot: 5	Annual New
7639438	6304 106 St NW	Plan: 2457S Block: 17 Lot: 6 – 8	Annual New
3111002	10405 106 Ave NW	Plan: B3 Block: 4 Lot: 229	Annual New
4314720		Plan: 9525376 Block: 10 Lot: 11	Annual New
4277471	18104 105 Ave NW	Plan: 9520285 Block: 4 Lot: 2	Annual New
4313516	10403 158 Ave NW	Plan: 7821797 Block: 59 Lot: 7	Annual New
8873572		Plan: 7620382 Block: 14 Lot: R4	Annual New
4150223	17834 106A Ave NW	Plan: 9021894 Block: 1 Lot: 5	Annual New

4150389	17950 106 Ave NW	Plan: 9021894 Block: 2 Lot: 8	Annual New
1535400	11216 156 St NW	Plan: 987KS Block: 4 Lot: 3	Annual New
1525781	18004 107 Ave NW	Plan: 7820005 Block: 3 Lot: 7	Annual New
4150249	10630 178 St NW	Plan: 9021894 Block: 1 Lot: 6	Annual New
7811003	5345 Gateway Blvd NW	Plan: 1314TR Block: 92 Lot: 5A	Annual New
2225100	14505 130 Ave NW	Plan: 3674NY Block: 5 Lot: 3	Annual New
1040906	9333 45 Ave NW	Plan: 8121210 Block: 5 Lot: 41	Annual New
1555309	10733 178 St NW	Plan: 7721110 Block: 8 Lot: 16	Annual New
1008747	18202 105 Ave NW	Plan: 7214KS Lot: 1	Annual New
2211977	14505 Yellowhead Trail NW	Plan: 7069KS Block: 6 Lot: 10 / 11	Annual New
3033727	9210 34 Ave NW	Plan: 8422100 Block: 10 Lot: 7A	Annual New
9942417	17803 106 Ave NW	Plan: 9624407 Block: 3 Lot: 14	Annual New
3787744	13232 170 St NW	LSD: 10 21-53-25-4 / LSD: 9 21-53-25-4	Annual New
10127076	1804 121 Ave NE	Plan: 0823305 Block: 1 Lot: 1A	Annual New
4259693	9939 115 St NW	Plan: NB Block: 14 Lot: 38 – 41	Annual New
4150298	17963 106A Ave NW	Plan: 9021894 Block: 2 Lot: 1	Annual New
10057721	12232 156 St NW	Plan: 0621031 Block: 2 Lot: 8B	Annual New
1560952	17303 103 Ave NW	Plan: 7920757 Block: 4 Lot: 11A	Annual New
1561455	17707 105 Ave NW	Plan: 7722579 Block: 6 Lot: 10	Annual New
4277497	18220 105 Ave NW	Plan: 9520285 Block: 4 Lot: 4	Annual New
1554914	17225 109 Ave NW	Plan: 7721110 Block: 8 Lot: 3	Annual New
8871857	4804 89 St NW	Plan: 5057TR Block: 7 Lot: 2	Annual New
4143608	13461 St Albert Trail NW	Plan: 9021619 Block: 13A Lot: 4	Annual New
3061157	12804 114 Ave NW	Plan: 8522173 Block: 6 Lot: 7	Annual New

4277463	18004 105 Ave NW	Plan: 9520285 Block: 4 Lot: 1	Annual New
8482440	9403 45 Ave NW	Plan: 8022997 Block: 5 Lot: 27	Annual New
10006578	7003 67 St NW	Plan: 0321747 Block: 4 Lot: 4	Annual New

Before:

Steven Kashuba, Presiding Officer
Francis Ng, Board Member
John Braim, Board Member

Board Officer: Denis Beaudry

Persons Appearing on behalf of Complainant:

Michele Warwa-Handel, Alberta Property Tax and Assessment Solutions (APTAS)
William A.C. Rowe, Barrister, Solicitor & Notary Public

Persons Appearing on behalf of Respondent:

Cameron Ashmore, Barrister & Solicitor, Law Branch, City of Edmonton

PRELIMINARY MATTERS

1. No objection was raised with respect to the composition of the Composite Assessment Review Board (“CARB”) and Board Members expressed no bias as regards the matter being heard before them. Upon the request of the parties, all evidence will be given under oath.

BACKGROUND

2. The *Complainant* in this appeal, Alberta Property Tax and Assessment Solutions (“APTAS”), was the *Respondent* in a preliminary application brought by the City of Edmonton and heard before a CARB on July 6, 2011. In the preliminary application, the City of Edmonton asked the CARB to dismiss 40 complaints filed by APTAS because they failed to comply with the legislation and regulations under the *Municipal Government Act* (“the Act”). In CARB order 0098 37/11, dated July 26, 2011, the Board determined that these complaints were valid, dismissed the City’s application, and ordered that these complaints proceed to merit hearings.
3. It is the position of APTAS that the City’s *preliminary hearing* application (July 6, 2011 hearing) to dismiss the 40 complaints did not have a reasonable chance of success, and therefore, APTAS is making this *current application* for an award of costs pursuant to the provisions of the Act and the *Matters Relating to Assessment Complaints Regulation* (“MRAC”).

4. Pursuant to Section 468.1 of the Act, and Section 52, Schedule 3 of MRAC, APTAS requests costs in the sum of \$23,619.00, consisting of:
 - 4.1 reimbursement of legal fees and disbursements for hearing costs, \$17,619.00, and
 - 4.2 costs for full day of hearings, \$6,000.00.
5. At the hearing of July 6, 2011, both parties agreed that Roll 9940905 would be the lead Roll, the decision of which would be applied to 39 additional Roll Numbers, as listed above. All of these roll numbers are now the subject of this appeal.

ISSUES

6. Did the request of the City of Edmonton seeking a *preliminary hearing*, held on July 6, 2011, amount to an *abuse* of the appeal process warranting an award of costs?
7. Did the request of the City of Edmonton, as noted in #6 above, have a *reasonable chance of success*?

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

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.

(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.

(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.

468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

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.

52(1) Any party to a hearing before a composite assessment review board or the Municipal Government Board may make an application to the composite assessment review board or the Municipal Government Board, as the case may be, at any time, but no later than 30 days after the conclusion of the hearing, for an award of costs in an amount set out in Schedule 3 that are directly and primarily related to matters contained in the complaint and the preparation of the party's submission.

(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:

- (a) whether there was an abuse of the complaint process;
- (b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process.

(3) A composite assessment review board or the Municipal Government Board may on its own initiative and at any time award costs.

(4) Any costs that the composite assessment review board or the Municipal Government Board award are those set out in Schedule 3.

(5) If the complainant is

- (a) the assessed person or the taxpayer of the property under complaint,
- (b) an employee or representative of that assessed person or taxpayer, or
- (c) an agent for that assessed person or taxpayer

the assessed person or the taxpayer is responsible for any costs awarded by a composite assessment review board.

(6) If the complainant is

- (a) the assessed person or the taxpayer of property other than the property under complaint,
- (b) an employee or representative of that assessed person or taxpayer, or
- (c) an agent for that assessed person or taxpayer,

the complainant is responsible for any costs awarded by a composite assessment review board.

(7) If the complainant is

- (a) the assessed person of linear property under complaint,
- (b) an employee or representative of that assessed person, or
- (c) an agent for that assessed person,

the assessed person is responsible for any costs awarded by the Municipal Government Board.

(8) The municipality in which the property under complaint is located is responsible for any costs awarded by a composite assessment review board against an employee or representative of the municipality.

(9) The municipality that files a complaint about an equalized assessment or linear property is responsible for any costs awarded by the Municipal Government Board against an employee or representative of the municipality.

(10) The Minister is responsible for any costs awarded by the Municipal Government Board against an employee or representative of the Minister.

Schedule 3 - Table of Costs

Where the conduct of the offending party warrants it, a Composite Assessment Review Board may award costs up to the amounts specified in the appropriate column in Part 1.

Where a Composite Assessment Review Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amount specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.

Category	Assessed Value			
	Up to and including \$5 million	Over \$5 million up to and including \$15 million	Over \$15 million up to and including \$50 million	Over \$50 million
Part 1 — Action committed by a party				
Disclosure of irrelevant evidence that has resulted in a delay of the hearing process.	\$500	\$1000	\$2000	\$5000
A party attempts to present new issues not identified on the complaint form or evidence in support of those issues.	\$500	\$1000	\$2000	\$5000
A party attempts to introduce evidence that was not disclosed within the prescribed timelines.	\$500	\$1000	\$2000	\$5000
A party causes unreasonable delays or postponements.	\$500	\$1000	\$2000	\$5000
At the request of a party, a board expands the time period for disclosure of evidence that results in prejudice to the other party.	\$500	\$1000	\$2000	\$5000
Part 2 — Merit Hearing				
Preparation for hearing	\$1000	\$4000	\$8000	\$10000
For first 1/2 day of hearing or portion thereof.	\$1000	\$1500	\$1750	\$2000
For each additional 1/2 day of hearing.	\$500	\$750	\$875	\$1000
Second counsel fee for each 1/2 day or portion thereof (when allowed by a board).	\$250	\$500	\$750	\$1000
Part 3 — Procedural Applications				
Contested hearings before a one-member board (for first 1/2 day or portion thereof).(ie. request for adjournment)	\$1000	\$1500	\$1750	\$2000
Contested hearings before a one-member board (for each additional 1/2 day or portion thereof).	\$500	\$750	\$875	\$1000

POSITION OF THE COMPLAINANT

8. The submission of the Complainant is that the Respondent (City of Edmonton) abused the complaint process when they filed for a *preliminary hearing* (APTAS vs. City of Edmonton) which was heard by CARB on July 6, 2011.
9. In this particular *preliminary matter* the Respondent based their complaint on the element of the clarity of the issues as stated in the complaint form by the Complainant. In the view of the Complainant, the necessity of this *preliminary hearing* is being questioned in that all of the issues were identified in the Complaint Form. As a result, the Complainant should be compensated for the time required to attend this unnecessary preliminary hearing and to prepare the necessary defense. This constitutes an abuse of the complaint process. In this case, reference is made to MRAC, Schedule 3, "*Where a Composite Assessment Review Board or the Municipal Government Board determines that a hearing was required to determine a matter that did not have a reasonable chance of success, it may award costs, up to the amount specified in the appropriate column Part 2 or 3, against the party that unreasonably caused the hearing to proceed.*"
10. Having noted this, it is the position of the Complainant that the Respondent did not have a reasonable chance of success and, as a result, costs should be assigned to the Complainant (APTAS).
11. To further support the request for costs, APTAS notes that the Respondent (the City of Edmonton) on July 6, 2011, had the advantage of having an earlier CARB decision before them, Order No. 0098 07/11 (Exhibit A-1, Tab 5), Colliers International vs. the City of Edmonton, released on June 3, 2011, in which the Board found that the Collier's complaints did comply with the legislative requirements and were therefore scheduled for merit hearings.
12. Having the advantage of this decision before them, the City of Edmonton should have known that their complaint of July 6, 2011 did not have a reasonable chance of success and to proceed would constitute an abuse of the complaint process.
13. In reference to CARB Board Order No. 0098 07/11, in which the Complainant, Colliers International, pointed out that in that particular case, the relevant legislation does not specify that issues cannot be common to multiple complaints (Exhibit A-1, page 29) as was evident in the appeal of July 6, 2011. In the Colliers' appeal, the Board accepted that the complaint form ought not contain evidence and that it is simply the forum for the introduction of the issues that would be raised, or more likely to be raised, at the merit hearing.
14. As for the manner in which a complaint is filed, it is the submission of the Complainant that a determination of *substantial compliance* is sufficient to meet the requirements under the current legislation.
15. The Complainant submitted that on several occasions an attempt had been made to contact an assessor of record to seek information about an assessment of a particular property only to find that telephone calls were not returned. On one occasion, when such telephone call was returned, the response of the Assessor was that the matter could not be discussed until all of the evidence was before the City. This, in turn, resulted in

the possibility of a complaint not being settled in advance of the scheduled hearing date. In *Colliers International Realty Advisors Inc. vs. The City of Edmonton* (Exhibit A-1, Page 69), the CARB found that, *“The new legislation may be said to encourage earlier and more detailed consideration of a complaint prior to its filing, yet it is not a requirement that the complainant must seek disclosure or must contact the assessor prior to filing a complaint.”*

16. In *Altus Group Limited vs. Calgary* (ARB CO/001/2010-P), the CARB found, *“...that in this case the Complainant having not disclosed any evidence in support of their complaint coupled with their apparent decision not to even attend the hearing of the matter to explain the grounds for their complaint, should have concluded that there was no reasonable chance of their complaint being successful”* (Exhibit A-1, page 74). This clearly is not the case here in that APTAS was prepared to proceed to the merits of all files as scheduled for July 6, 2011. As a result, one could not advance the argument that a complaint had little chance of success.
17. In *Tirion Group of Companies and Tirion Properties Ltd. vs. Calgary*, CARB CO-0004/2010-P, *“Where a CARB or the Municipal Government Board determines that the hearing was required to determine the matter that did not have a reasonable chance of success, it may award costs, up to the amount specified in the appropriate column in Part 2 or Part 3 of Schedule 3 of MRAC (page 34), against the Party that unreasonably caused the hearing to proceed (page 81). Further to this, “The Board found that based on the findings of fact as set out above that there was an abuse of the complaint process by the City of Calgary (The Respondent) and that the City had no chance of success given the weak nature of the evidence, and the prior years’ decisions before the board,”* (Exhibit A-1, pages 82 – 83).
18. In contrast to *Collin Wong vs. City of Edmonton* (Exhibit A-1, page 96) where, *“...the Complainant failed to clearly identify on what grounds the application for costs is being made, the category of costs that he is relying upon, and the costs that he is seeking,”* which exhibited a lack of clarity in its request for costs. However, in this particular application for costs, the Complainant clearly states the amount.
19. The Board notes that the Respondent requested that no costs be attached to any Roll Number which was withdrawn or dismissed (Exhibit E-1, Page 79). In response to this, the Complainant submitted that the preparation time required for these Roll Numbers was synonymous with the work required for all of the other files. As a result, a cost should be attached equitably to all 40 Roll Numbers.
20. In conclusion, the Complainant asks the CARB to award costs as follows:
A total amount of \$23,619.00 consisting of:
 - a. Reimbursement of legal fees and disbursements (including anticipated fees and disbursements for cost hearing); \$17,619.00
 - b. Costs for full day of hearings (MRAC, Part 3 of Schedule 3); \$6,000.00.

POSITION OF THE RESPONDENT

21. It is the position of the Respondent (City of Edmonton) that in the appeal of July 6, 2011 (APTAS vs. City of Edmonton, No. 0098 37/11, Exhibit A-1, Tab 1), there is no evidence of *abuse* of process and there *was a chance of success*.
22. The position of the Respondent, in that case, was that the Complainant had not successfully made the argument to show that there was any abuse in the appeal of July 6, 2011 and, instead, focused solely on whether there was a reasonable chance of success (Exhibit E-1, page 2). The Complainant must first establish that there was an abuse of the complaint process. They have not met this challenge.
23. In particular, earlier CARB decisions have established that making *good faith arguments* and asking the CARB to make a decision of a procedural matter, has been held not to be an abuse of the complaint process (Exhibit E-1, page 2), Altus Group Ltd. vs. City of Edmonton, November 26, 2010 (Exhibit E-1, Tab 1), and Altus Group Ltd. vs. City of Edmonton, October 29, 2010 (Exhibit E-1, Tab 2).
24. In support of their earlier decision to challenge the manner in which the 40 appeals were filed (see CARB decision of July 6, 2011), the Respondent pointed out that at least one such CARB decision dealing with similar preliminary matters is now the subject of an appeal to the Court of Queen's Bench to obtain a ruling on whether that CARB's interpretation of the legislation was correct. In view of this, the cost application in this case should have regard for,
 - 24.1 the fact that CARB decisions on this matter in the recent past have been split, and
 - 24.2 that the matter is before the Court of Queen's Bench (Colliers vs. City of Edmonton, Exhibit E-1, page 3), and one should, in the least, await the outcome of this decision.
25. In referring to the complaint of APTAS vs. City of Edmonton (No. 0098 37/11, CARB decision dated July 6, 2011), the Respondent pointed out that the list of issues listed therein by the Complainant lacked clarity and defeated the legislative intent to deal with attempts to resolve complaints prior to the scheduled hearing date (Exhibit E-1, page 5). Further to this, a Complainant should not benefit from deliberately attempting to only put the minimum effort into the complaint form, and in effect, obstruct the intent of the complaint process.
26. In addressing the question of costs, the Respondent pointed out that of the 40 complaints (Exhibit E-1, Tab 10, page 79), nine have been withdrawn, while nine have been withdrawn with a correction. As a result, in adjudicating costs, the Board should not attach any costs to these 18 complaints.
27. In the event that the Board applied costs (Exhibit E-1, page 4, paragraphs 20 – 26), the Respondent pointed out that some of the costs incurred by the Complainant in this appeal may be applied not only to the complaints under the jurisdiction of CARB, but also those complaints which fall under the jurisdiction of LARB (Local Assessment Review Board). The CARB does not have jurisdiction to hear LARB cost applications.

28. In conclusion, it is the position of the Respondent that there was no abuse of the complaint process in requesting the preliminary hearings (APTAS vs. City of Edmonton, July 6, 2011) and that there was a reasonable chance of success given the conflicting CARB decisions on similar issues. As a result, the application for costs by the Complainant should be disallowed.

DECISION

29. It is the decision of the Board to deny the Complainant's request for costs.

REASONS FOR THE DECISION

30. In seeking a decision in this particular complaint, the Board must have regard for an earlier CARB decision dated July 26, 2011 in which the City of Edmonton argued that the complaints did not comply with legislation. In particular, the manner in which the issues were articulated by the Complainant (APTAS) was subsequently found by the CARB to have contextual, grammatical and/or word usage problems. Furthermore, the City of Edmonton argued that the issues had been presented in a *boiler plate* manner which created doubt in their mind as to what were the *core* issues in each of the 40 roll numbers. In that decision, even though the CARB found in favor of APTAS, it also found that there were contextual and grammatical errors in the presentation of issues, which, in the first stance, led the City of Edmonton to apply for the preliminary hearing scheduled for July 6, 2011.
31. Since the CARB concluded, in its decision of July 26, 2011, that there were weaknesses in APTAS' articulation of the issues, the Board rejects the argument advanced by the Complainant that the City of Edmonton had *no reasonable chance of success*. These weaknesses, as noted above, included contextual, grammatical and/or word usage problems.
32. Therefore, the Board is persuaded by the argument advanced by the Respondent that the preliminary matter it raised, which was heard on July 6, 2011, (APTAS vs. City of Edmonton) neither constituted an *abuse* of the complaint process nor was there an absence of a *chance of success*.
33. The Board was made aware by both parties that previous CARB decisions as to the question of a Complainant's compliance with Section 460 of the Act (MGA, R.S.A. 2000, Chapter M-26), and Section 2 of MRAC, have been contradictory. Some CARBs have found that the Complainant had not met the requirements under the legislation while other CARBs have found that the Complainant had met these requirements. As a result of this incongruity, the Board cannot rely on the reasoned decisions of CARBs through which clarity might be gleaned when adjudicating this complaint. Therefore, the Board accepts that the Respondent did have a reasonable chance of success in that earlier preliminary hearing of July 6, 2011.

34. The Board agrees with the submission of the Respondent that the complaint initially filed by the Complainant, exhibited a lack of clarity in the presentation of the issues listed therein and, as a result, an application to dismiss by the Respondent does not constitute an abuse of the complaint process.
35. From this, the Board has concluded that in the preliminary matter addressed by the CARB on July 6, 2011, the Respondent did have a reasonable chance of success and, therefore, costs should not be awarded to the Complainant by the Board.
36. With regard to the quantum issue raised by the Complainant, the Board finds that this is now moot as no costs are being awarded.

DISSENTING OPINION AND REASONS

37. There was no dissenting opinion.

Dated this 2nd day of December, 2011, at the City of Edmonton, in the Province of Alberta.

Steven Kashuba, 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, RSA 2000, c M-26.
