



ASSESSMENT REVIEW BOARD

MAIN FLOOR CITY HALL
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NOTICE OF DECISION 0098 592/10

Altus Group Ltd
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) of Edmonton from a hearing held October 28, 2010, respecting an application by the City of Edmonton for costs against the Complainant, Altus Group Ltd. This cost hearing arises from a merit hearing held August 25, 2010, respecting properties described as:

Roll Number 1659606	Municipal Address 8202 175 Street NW	Legal Description Plan: 7620073 Block: 12 Lot: 1B
Assessed Value \$6,547,000	Assessment Type Annual New	Assessment Notice for: 2010

Before:

David Thomas, Presiding Officer
Petra Hagemann, Board Member
Howard Worrell, Board Member

Board Officer:

Karin Lauderdale

Persons Appearing: Applicant

John Trelford, Altus Group
David Fu, Altus Group
Stephen Cook, (Observer) Altus Group
Bob Brazzell, Altus Group

Persons Appearing: Complainant

Rebecca Ratti, Law Branch
Steve Lutes, (Observer) Law Branch
Ingrid Johnson, (Observer), Law Branch

PRELIMINARY MATTERS

The question of bias was addressed and no objections were raised by either of the parties appearing or by the Board.

ISSUE(S)

1. Does every issue rejected for hearing (because it was outside of the complaint form) require an award of costs?
2. Do the circumstances of this proceeding constitute an abuse of process warranting costs?

LEGISLATION

The Municipal Government Act, R.S.A. 2000, c. M-26;

S.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.

The Matters Relating to Assessment Complaints Regulation, AR 310/2009

S.52(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review 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.*

POSITION OF THE APPLICANT

The Applicant seeks costs for the attempted introduction of five new issues for hearing on the subject property. These issues were not included in the original complaint form.

At the August 25, 2010, merit hearing, the panel decided three issues would not be heard and the remaining two issues were similarly found not identified on the complaint, but the panel agreed to hear from the Complainant on the allegation of calculation errors in the assessment in relation to them. The Applicant states no material evidence was given for such allegation of error. As such, the Applicant seeks costs in the sum of \$100 per issue or \$500 from the Complainant.

The Applicant notes that this wrongdoing by the Complainant is identified in the Table of Costs appendix to MRAC and, as such, warrants an award of costs because Section 468(1) directs such identified offences must incur an award of costs by CARB.

The Applicant notes that while it has given no evidence of lost time or resources from the Complainant's actions, which are only a consideration in cost, not a prerequisite to an award of costs. The sum of \$100 each for such attempted new issues is justified to discourage such behaviour in the future.

POSITION OF THE COMPLAINANT

The Complainant advises that it did not file the complaint. That was done by the owners of the property. Subsequent to filing the complaint, the owners realized they needed help to pursue their complaint and retained this agent, identified here as the Complainant.

This Complainant states that the wording of the complaint form was such that it was unclear what may or may not be properly included in the complaint form issues.

On behalf of the client, the Complainant prepared disclosure on issues believed important to the client's complaint and within scope of the issues on the complaint form. The Complainant says this was done in good faith and not to thwart the hearing process, but to best protect the owners' interest.

The Complainant states that after filing the disclosure, there was no contact from the Respondent about this. When the Respondent disclosure was received and indicated there would be a preliminary matter on new issues, the Complainant phoned the Respondent. During that call, the Respondent only confirmed there would be an application regarding new issues. The Respondent did not identify which issues, or how many, were being challenged.

The Respondent has not stated there to be any loss of time or resources, or prejudice to it. The Complainant says to impose costs in these circumstances may inhibit agents from fully pursuing their clients' rights of appeal.

DECISION

The application for costs is dismissed.

REASONS FOR THE DECISION

In considering a cost application, the CARB must look to the intent and role of costs in the assessment complaint process under the new legislation.

Section 468(1) does require a CARB to order costs "in the circumstances set out in the regulations".

A further consideration for this CARB in considering costs is whether or not they are reciprocal (i.e. exposing each party equally to the prospects of costs). Within a fair hearing process, they should certainly be so.

With this in mind, if the Complainant had been successful in its disclosure issues, would the Respondent be liable for costs? The solicitor for the Respondent suggests that, yes; they could, considering the preamble and Section 3 to the Table of Costs.

However, in looking at that preamble, the Respondent would only be liable for costs if the Respondent's position were devoid of a reasonable chance of success. The CARB believes the same test of behaviour is required to consider the items in Part I.

This is in accord with the idea that costs are introduced to be out of the ordinary awards to sanction behaviour descriptive of the complaint appeal process and not the consequence of any contested issue, evidence or procedural conflict.

In reviewing the circumstances of this matter and the disclosure of the Complainant, the CARB does not find them to constitute an abuse of process nor are they seeking to pursue matters with an unreasonable chance of success.

In making this finding, the CARB gives consideration to three mitigating circumstances.

Firstly, this Complainant was attempting to place the owners' layman's language on the complaint form into disclosure issues. This may well lead to ambiguity that may require a CARB consideration.

Secondly, on receiving the Respondent's disclosure, which indicated the Respondent was challenging some issues, the Complainant tried to speak to the assessor. This would appear consistent with working within systems, attempting resolution.

Finally, in their judgment, the merit hearing panel gave no finding, comment or otherwise that they found the Complainant's actions in advancing its disclosure issues was improper or an abuse of process.

In sum, the CARB does not believe the wording of the new costs legislation requires a cost award over every lost application relative to costs, nor does it find that the actions of this Complainant constitute an abuse of process that would warrant costs.

DISSENTING OPINIONS AND REASONS

There was no dissenting opinion.

Dated this 26th day of November, 2010, at the City of Edmonton, in the Province of Alberta.

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: Municipal Government Board
1109079 Alberta Inc.