



## ASSESSMENT REVIEW BOARD

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

### NOTICE OF DECISION NO. 0098 609/11

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 December 21, 2011 respecting a postponement or adjournment request for:

#### Roll Numbers

Offices	Retail	Shopping Centres	AGI
1033141	1560002	6841928	10202513
2173201	3043403	9940400	
3128006	4132056	10035737	
3218757	4132072		
3371754	9301003		
3595535			
10015506			
10083295			

#### Before:

Lynn Patrick, Presiding Officer

**Board Officer:** Karin Lauderdale

#### Persons Appearing on behalf of Complainant:

Documents submitted in lieu of appearance

#### Persons Appearing on behalf of Respondent:

Documents submitted in lieu of appearance

## **BACKGROUND**

The Respondent has requested a postponement of the merit assessment hearings for complaints respecting the 17 roll numbers herein which have been scheduled over a period commencing January 23, 2012 to February 27, 2012. For those hearings scheduled from January 23, 2012 to January 30, 2012 the provision of s.8(2) of *Matters Relating To Assessment Complaints Regulation* (MRAC) respecting the disclosure of evidence by the Complainant have taken effect as they fall within the 42 day disclosure period prescribed. The balance of the complaints scheduled from February 6, 2012 through February 27, 2012 presently require disclosure compliance in the period December 26, 2011 through January 16, 2012 by the Complainant. The Respondent's disclosure period of 15 days before the hearing dates commences January 8, 2012 and runs through February 12, 2012. The basis for the postponement request is that all of the roll numbers in this matter are part of a larger group that are the subject of an application for leave before the Alberta Court of Queen's Bench in a matter that may have an impact upon the merit hearings of the complaints filed.

## **ISSUE**

Should a postponement of the 2011 Annual New Realty Assessment hearings for the above listed roll numbers be granted?

If so, should the evidence disclosure dates for those hearings still outside the 42 day period as prescribed by MRAC also be postponed?

And if so should the date for the postponement be the "10 business days after the decision of the Court has been delivered" as requested?

## **POSITION OF THE RESPONDENT**

The Respondent argues that the matter before the Court may have an impact upon the merit hearings of the complaints respecting the roll numbers in this matter and that this is an exceptional circumstance within the meaning of s. 15(1) of MRAC. The Respondent cited several CARB decisions on postponement requests based on similar circumstances where postponements were granted. The date for the postponement requested by the Respondent is 10 business days after the decision of the Court has been delivered on the basis that it allows convenient time to prepare and that it meets the requirement of s. 15(3) of MRAC that a date be set by the CARB. The Respondent contends that since all of the roll numbers in this matter are part of the application before the Court that all of those complaint hearings should be rescheduled together.

## **POSITION OF THE COMPLAINANT**

The position of the Complainants' agent is that a postponement is in order however not all of the roll numbers should be included because there is not an exemption issue in certain cases.

## **LEGISLATION**

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

- 15(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 Board grants the postponement of the hearings dates to the week of April 2 to 5, 2012 and Orders that the disclosure of evidence dates by the parties remain the same as the existing schedule and that there is no extension or postponement of such dates.

## **REASONS FOR THE DECISION**

The CARB considered the written submissions of the parties and agrees that the matter before the Court is an exceptional circumstance within the meaning of s.15 of MRAC and its subsequent interpretation by other CARBs. The CARB in this matter has been further persuaded of this interpretation by the decision of Germaine, J. in *Edmonton (City) v. Assessment Review Board of the City of Edmonton 2010 ABQB 634*, and expressed in Paragraph 43, “*The Regulation must therefore be interpreted in such a way that the definition of exceptional circumstances cannot be so narrow and restrictive as to prevent hearings that are fair to both litigants....*”

The requirement to set a date as demanded by s. 15(3) of MRAC is not met by the requested 10 business days after the decision of the Court has been delivered. There is no definition of “business days” and that phrase can have a different meaning to various of the complainants. Furthermore, if the Court were to deliver the decision within the period ending on January 6, 2012 then some if not all hearings would require hearing dates in advance of those now prescribed. The CARB has jurisdiction to postpone or adjourn hearings but not to advance hearing dates without the parties agreement. There is also confusion and uncertainty as to evidence disclosure dates in such an arrangement thus for certainty it is necessary to set a date that meets the standards for dates and days as contemplated by the Act and the Regulation.

All of the roll numbers before the Court are potentially to be impacted by the decision and thus cannot be selectively separated by the CARB. The reasons advanced by the Complainant were not sufficiently clear to establish a basis for such request.

With the retention of the disclosure of evidence dates to the present dates there will be fairness to both parties and a completion of the advanced preparation required by the Regulation. If there were the need for further postponement considerations then all that would need to be addressed would be the hearing dates. It appears that no harm will result to either party.

Date: April 2 – 5, 2012  
Time: 9:00 am  
Location: Edmonton

A new hearing notice will not be sent.

The Board directs that no further evidence or documentation be submitted in regard to this postponement matter.

Dated this 21<sup>st</sup> day of December at the City of Edmonton, in the Province of Alberta.

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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, RSA. 2000, c M-26.*

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