



## **ASSESSMENT REVIEW BOARD**

MAIN FLOOR CITY HALL  
1 SIR WINSTON CHURCHILL SQUARE  
EDMONTON ALBERTA T5J 2R7  
(780) 496-5026 FAX (780) 496-8199

### **NOTICE OF DECISION      0098 753/10**

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) from a hearing held on February 28, 2011 respecting an application by the City of Edmonton for costs against the Respondent, Altus Group Limited. This costs application arises from a series of merit hearings held between August 23 and October 21, 2010 more particularly itemized in Appendix 'A' to this order.

#### **Before:**

Dave Thomas, Presiding Officer  
Dale Doan, Board Member  
Mary Sheldon, Board Member

#### **Board Officer:**

Segun Kaffo

#### **Persons Appearing: Respondent**

Walid Melhem, Altus Group  
Robert Brazzell, Altus Group  
John Trelford, Altus Group  
Stephen Cook (Observer)

#### **Persons Appearing: Applicant**

Cameron Ashmore, Law Branch  
Rebecca Ratti, Law Branch  
Bonnie Lantz, Assessor  
Steve Lutes (Observer)  
Ingrid Johnson (Observer)

### **PRELIMINARY MATTERS**

No objections with respect to potential bias were raised by either of the parties appearing or by the Board.

Upon commencement of the cost application hearing, it was decided that roll number 8480097 should be considered to be the Master File and that the evidence, submissions and arguments are carried forward to the other files.

## **BACKGROUND**

The Respondent filed complaints for a large number of industrial warehouses. The subject matter of this application involved 92 of the industrial warehouse complaints. That number was later reduced to 88 following discussion between the parties. While a number of these 88 complaints alleged other issues, common to them all was the claim that the Income Approach to assessment produced a more reliable estimate of market value.

As part of the preliminary matters on the first day of hearing, both parties agreed, upon discussion, that Roll Number 8480097 would be heard first, as the Respondent's (Applicant in this hearing) expert witness had based his presentation on the Income Approach methodology on this file.

As part of its disclosure requirements the Respondent had filed over 2,000 pages of material involving copious amount of data as support for its position regarding its methodology concerning the income approach to value. After cross-examination upon this Income Approach, the Respondent withdrew this issue and disclosure from the CARB's consideration for the complaint and all other complaints advancing the Income Approach. The Respondent accepted that errors within its disclosure made it unreliable.

The Respondent did not withdraw any of the 88 complaints, even on those having no other issue.

## **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 (MRAC), AR 310/2009;***

*S.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.*

### **MRAC Schedule 3, Table of Costs**

*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 amounts specified in the appropriate column in Part 2 or 3, against the party that unreasonably caused the hearing to proceed.*

### **ISSUES**

1. Have the parties actions amounted to an abuse of process warranting an award of costs?
2. If so, what is an appropriate award of costs in these circumstances?

### **POSITION OF THE APPLICANT**

The Applicant states that when looked at in the whole context of these hearings, the actions of the Respondent constitute an abuse of process deserving the sanction of costs under section 468.1 of the *Municipal Government Act* (MGA) and section 52(2) of the *Matters Relating to Assessment Complaints Regulation* (MRAC).

The Respondent's appeal challenging the entire assessment methodology for this type of property required the assistance and advice of an expert appraiser to analyze and respond to this approach. For this, the Applicant hired such an appraiser and incurred costs of \$6,300 in doing so.

Secondly, the vast number of sales and pages of supporting documents required review and verification to enable the Applicant to file its response. In this regard the Applicant notes an estimate of time for three assessors on income issues alone of 67, 10 and 12 hours respectively.

With this investment of resources the Applicant filed disclosure that pointed out a number of factual errors in the Respondent's analysis.

Despite some corrections to its disclosure, the Respondent pursued the Income Theory at hearing. In cross examination, further factual and calculation errors led the Respondent to request time to speak to legal counsel. Upon return, the Respondent withdrew the Income Theory and disclosure, admitting it was unreliable.

In tendering its disclosure, the Respondent has clearly been careless, if not negligent, and so requires sanction. This carelessness has resulted in the Applicant having to expend significant resources to review and respond to the Respondent's filings – a response that was, ultimately, unnecessary.

The Applicant lastly argues that the refusal of the Respondent to withdraw the complaints where the income theory was the only ground for which disclosure was made demonstrates the Respondent's disrespect to the CARB's time as well.

For costs, the Applicant seeks recovery of the expert fee of \$6,300, plus one successfully contested application at \$3,000 representing two half days of hearing under the top column in Part 2 of the Table of Costs (Appendix 'B'), and an award of \$450 per roll number respecting the preparation for all the roll numbers under the lowest column of the Table of Costs Part 2, which, while significantly less than the CARB could award in costs, is appropriate here.

### **POSITION OF THE RESPONDENT**

The Respondent argues receiving accurate information of sales or income data is always difficult. Further, the Respondent states that it is not uncommon for one or both parties to correct their material at hearing if better information can be found.

The Respondent argues that the advancing of an Income Approach to assessment was done in good faith. Further, when errors were pointed out by the Applicant, the Respondent corrected its disclosure. The Respondent points out the fact that when further unforeseen errors were revealed, the Respondent took the responsible course of withdrawing this material to minimize lost time for the CARB.

The Respondent argues it has always taken a position to assist the CARB, and those before it, to expedite the hearing process.

The Respondent says it should not bear the financial cost of the Applicant's decision to retain outside expert advice because securing that advice was purely a matter of choice by the Applicant.

The Respondent admits the failure to withdraw complaints dependent only on the withdrawn disclosure was an error that it now recognizes.

Finally, the Respondent suggests that since the Applicant's review pointed out some of the errors, if the Applicant knew of other errors that were only used at hearing to embarrass the Respondent, this is an abuse of process that should allow the Respondent to receive some consideration in costs.

### **DECISION**

The Applicant is awarded costs in the sum of \$18,100 to be apportioned equally among roll numbers contained in Appendix 'A'.

### **REASONS FOR THE DECISION**

Firstly, the suggestion that the Applicant failed to disclose in advance the fatal errors in the Respondent's disclosure constituted an abuse of process is rejected. There is absolutely no evidence to support this allegation. Further, it would be strange to find that the Applicant has a higher responsibility for accuracy of the Respondent's material disclosure than the Respondent itself.

The Board rejects the Respondent's claim for costs.

The CARB does not find that the actions of the Respondent amount to bad faith. However, whether categorized as negligence or carelessness, or a lack of attention to detail, the result of this massive disclosure of evidence and challenge to the assessment model required the Applicant to prepare a detailed and careful response to it. In the circumstances, a great deal of this expenditure of time and resources became redundant when the Respondent withdrew its income argument and disclosure at first hearing.

Similarly, with a challenge to potentially this many property rolls in its assessment model, the retention of an expert is certainly reasonable, even prudent. Accordingly, in determining a cost award, the CARB includes the expert's invoice of \$6,300.

In looking at the more discretionary allocations, the CARB gave consideration to three matters.

Firstly, the consequences of the Respondent's abuse of the process were significant, not trivial.

Secondly, the imposition of costs under MRAC is relatively new, with limited practical experience by parties of its application.

Thirdly, the initial recruiting of the expert and much investment of assessors' time may have been done when there were numerous like rolls to be heard.

Weighing all, the CARB makes a cost award of \$100 per roll or \$8,800. The CARB notes that the Applicants request for \$450 per roll was merely a suggestion. The Board notes that Part 2 of Schedule 3 of MRAC allows up to \$1000 for preparation for the hearing according to the lowest column. The Board considers that \$100 per roll for preparation for the hearing is appropriate under the circumstances.

The Board considers that the \$3,000 requested by the applicant for two half days of contested hearings, under the top column of Part 2 of Schedule 3 is warranted.

This, together with the expert fee, and the cost award per roll totals \$18,100. This sum should be equally allocated to all rolls in Appendix 'A'.

### **DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 28<sup>th</sup> day of March, 2011, at the City of Edmonton, in the Province of Alberta.

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**Dave Thomas**  
**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.*

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CC: Municipal Government Board

## APPENDIX 'A'

<b>Roll Number</b>	<b>Assessed Value</b>	<b>Municipal Address</b>	<b>Legal Description</b>
4026092	\$1,678,500	8605 Coronet Road NW	Plan: 8821333 Block: 4 Lot: 4A
4314415	\$1,537,000	4919 84 Avenue NW	Plan: 9524998 Lot: 1
8879389	\$1,939,500	5630 88 Street NW	Plan: 7821657 Block: 3 Lot: 5
10018924	\$2,767,000	4204 76 Avenue	Plan: 0422505 Block: 5 Lot: 9A
4994505	\$2,786,500	8544 126 Avenue NW	Plan: 3018KS Block: 58A Lot: 3
3268455	\$1,790,500	10505 111 Street NW	Plan: B4 Block: 10 Lot: 159 - 161
3517968	\$3,046,500	11755 108 Avenue NW	Plan: 1755KS Block: 19 Lot: H
2589307	\$7,696,500	521 123 Street NW	Plan: 1497HW Block: 2
3200854	\$1,148,000	10557 108 Street NW	Plan: B4 Block: 7 Lot: 163 & 164
9989352	\$1,800,000	15035 114 Avenue NW	Plan: 0122850 Unit: 3
9989350	\$1,306,000	11330 149 Street NW	Plan: 0122850 Unit: 1
8480410	\$5,394,500	4704 97 Street NW	Plan: 7721481 Block: 2 Lot: 9
8635377	\$2,722,000	5709 99 Street NW	Plan: 3367RS Block: A Lot: 7A
8487159	\$4,248,000	4435 99 Street NW	Plan: 7521204 Block: 7 Lot: 10A
8973273	\$3,992,000	4130 99 Street NW	Plan: 7520780 Block: 2 Lot: 9
8480097	\$3,256,000	4816 99 Street NW	Plan: 4187RS Block: 1 Lot: 4
8480063	\$3,205,000	4920 99 Street NW	Plan: 4187RS Block: 1 Lot: 3
4229142	\$4,622,500	3909 99 Street NW	Plan: 9422207 Block: 3 Lot: 6 & 7
4229134	\$2,502,000	9845 41 Avenue NW	Plan: 9422207 Block: 3 Lot: 5
1523067	\$4,622,000	11603 165 Street NW	Plan: 7620459 Block: 5 Lot: 2
1615251	\$3,867,500	12150 160 Street NW	Plan: 7620898 Block: 3 Lot: 11, 12/13
2219087	\$3,294,500	14055 128 Avenue NW	Plan: 5841RS Block: 1 Lot: 3A
3941457	\$7,576,000	10235 184 Street	Plan: 9323361 Lot: 1A
4149266	\$3,614,500	11610 178 Street NW	Plan: 9021777 Block: 4 Lot: 11
9971413	\$5,525,500	10203 184 Street	Plan: 9923740 Lot: 1D / SW 4- 53-25-4
9971414	\$4,660,500	18330 102 Avenue NW	Plan: 9923740 Lot: 1E / SW 4- 53-25-4
9997056	\$5,091,000	15108 131 Avenue NW	Plan: 0224531 Block: 104 Lot: 6
8482606	\$2,058,500	9840 45 Avenue NW	Plan: 7721481 Block: 6 Lot: 1
8627457	\$2,367,500	9805 62 Avenue NW	Plan: 4837KS Block: 4 Lot: D
10034817	\$11,088,500	7028 56 Avenue NW	Plan: 0522813 Block: 9 Lot: 12
8956047	\$3,517,500	9217 27 Avenue NW	Plan: 7620561 Block: 11 Lot: 2
8976979	\$5,818,500	9503 42 Avenue NW	Plan: 7721479 Block: 17 Lot: 1-4
10026911	\$11,079,500	9803 12 Avenue SW	Plan: 0425761 Block: 17 Lot: 2

1074871	\$1,671,000	2010 80 Avenue NW	Plan: 8020358 Block: 1 Lot: 6
8886574	\$2,250,500	8726 61 Avenue NW	Plan: 7821657 Block: 12 Lot: 15
9541400	\$2,770,500	7225 50 Street NW	Plan: 2214HW Block: F Lot: 2
9506759	\$670,500	7139 77 Avenue NW	Plan: 7884AH Block: 3 Lot: 25 & 26
9506775	\$670,500	7133 77 Avenue NW	Plan: 7884AH Block: 3 Lot: 27 & 28
8991804	\$5,151,000	9116 39 Avenue NW	Plan: 6207KS Block: 5 Lot: 12
9994226	\$5,837,500	9830 32 Avenue NW	Plan: 0126310 Block: 17 Lot: 10
9984978	\$3,872,000	9404 41 Avenue NW	Plan: 0024106 Block: 19 Lot: 22
9986428	\$10,122,500	9404 39 Avenue NW	Plan: 6207KS Block: 5 Lot: 7 & 8
8480220	\$4,948,000	4703 101 Street NW	Plan: 3248TR Block: 1 Lot: 9
9957568	\$3,114,000	17203 109 Avenue NW	Plan: 9820462 Block: 8 Lot: 20
2179208	\$810,000	14740 115 Avenue NW	Plan: 1751KS Block: 7 Lot: 23
8622607	\$1,302,500	9930 65 Avenue NW	Plan: 3888HW Block: 34 Lot: 2 & 3
1080506	\$4,759,000	4175 95 Street NW	Plan: 8122283 Block: 19 Lot: 21
9552787	\$2,345,000	4350 82 Avenue NW	Plan: 7520086 Block: 1 Lot: 3
10005580	\$3,783,500	18008 118 Avenue NW	Plan: 0320670 Block: 7 Lot: 10
9953876	\$3,854,000	17810 114 Avenue NW	Plan: 9820739 Block: 6 Lot: 5A
9953877	\$7,030,500	18028 114 Avenue NW	Plan: 9820739 Block: 6 Lot: 5B
2194652	\$3,546,000	14503 121A Avenue NW	Plan: 5951KS Block: 3 Lot: 1
4314423	\$1,380,000	8233 50 Street NW	Plan: 9524998 Lot: 2
8630253	\$3,237,000	6035 97 Street NW	Plan: 6123HW Block: 1 Lot: A
8886459	\$1,959,500	6031 88 Street NW	Plan: 7821657 Block: 12 Lot: 9
8889818	\$1,823,000	7028 50 Street NW	Plan: 8022112 Block: 25 Lot: 1
8975971	\$2,090,000	9229 35 Avenue NW	Plan: 7821552 Block: 11 Lot: 2
10026914	\$17,402,000	9503 12 Avenue SW	Plan: 0425761 Block: 18 Lot: 1
8991309	\$5,087,000	9331 39 Avenue NW	Plan: 6207KS Block: 5 Lot: 2
9553025	\$5,207,000	4303 82 Avenue NW	Plan: 7520086 Block: 3 Lot: 2 & 3
8956153	\$2,018,500	9305 27 Avenue NW	Plan: 7823307 Block: 11 Lot: 17
9986111	\$5,431,500	14735 134 Avenue NW	Plan: 0024727 Block 11 Lot: 21
10042949	\$13,101,500	5723 67 Street NW	Plan: 9826066 Block: 5 Lot: 17 & 18
8888166	\$2,158,500	6303 Wagner Road NW	Plan: 6214NY Block: 19 Lot: 2
8978314	\$1,841,000	9425 35 Avenue NW	Plan: 7821552 Block: 21 Lot: 3
9561887	\$4,067,500	4304 76 Avenue NW	Plan: 7520086 Block: 5 Lot: 5
9562893	\$3,108,500	3611 76 Avenue NW	Plan: 7821234 Block: 6 Lot: 9
9566035	\$3,007,000	3751 74 Avenue NW	Plan: 7821234 Block: 12 Lot: 2
9941098	\$2,914,000	8704 48 Avenue NW	Plan: 9622009 Block: 8 Lot: 6A
8482952	\$5,398,000	4604 97 Street NW	Plan: 7721899 Block: 6 Lot: 12 & 13
8873630	\$5,050,000	8604 53 Avenue NW	Plan: 7620382 Block: 14 Lot: 6
9946164	\$23,668,500	5203 86 Street NW	Plan: 9121003 Block: 4 Lot: 18
10008267	\$4,260,500	9412 51 Avenue NW	Plan: 0323387 Block: 19 Lot: 5B
10060758	\$7,404,000	4403 97 Street NW	Plan: 0623454 Block: 5 Lot: 24A

1066380	\$2,985,500	3738 97 Street NW	Plan: 8121339 Block: 20 Lot: 11C
8884850	\$1,931,000	6034 87 Street NW	Plan: 2683NY Block: 10 Lot: 8
8638363	\$3,058,500	8605 63 Avenue NW	Plan: 6445MC Block: 4 Lot: 5
9541905	\$2,831,000	7220 48 Street	Plan: 2214HW Block: F Lot:7
4112769	\$6,856,500	4405 Eleniak Road	Plan: 8923379 Lot: M
8970055	\$11,559,000	4150 101 Street	Plan: 4984 NY Block: 1 Lot: 1
9547159	\$3,934,500	4625 92 Avenue	Plan: 3597NY Block: 1 Lot: A
9940064	\$5,122,000	1912 66 Avenue NW	Plan: 9621416 Block: 1 Lot: 2A
9972798	\$5,968,000	7603 McIntyre Road NW	Plan: 9925652 Block: 3 Lot: 23
9976783	\$19,657,000	2103 64 Avenue NW	Plan: 0020014 Block: 3 Lot: 22
10004189	\$10,873,000	7003 Roper Road	Plan: 0227727 Block: 9 Lot: 11
10100341	\$20,778,000	2603 76 Avenue NW	Plan: 0729253 Block: 1 Lot: 1
10161899	\$8,631,000	10050 29A Avenue NW	Plan: 0923583 Block: 2 Lot: 22C
10064564	\$17,165,000	6704 59 Street NW	Plan: 0625512 Block: 11 Lot: 6

## APPENDIX 'B'

### Schedule 3

#### Table of Costs

Where the conduct of the offending party warrants it, a composite assessment review board or the Municipal Government Board may award costs up to the amounts specified in the appropriate column in Part 1.

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 amounts 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
<b>Part 1 — Action committed by a party</b>				
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
<b>Part 2 — Merit Hearing</b>				
Preparation for hearing	\$1000	\$4000	\$8000	\$10 000
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
<b>Part 3 — Procedural Applications</b>				
Contested hearings before a one-member board (for first 1/2 day or portion thereof).(i.e. 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