

LEDUC
COMPOSITE ASSESSMENT REVIEW BOARD
JURISDICTIONAL DISPUTE

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1.

between:

City of Leduc, APPLICANT

and

Altus Group Ltd, RESPONDENT

before:

R. Mowbrey, PRESIDING OFFICER

This is a complaint to the Composite Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Leduc and entered in the 2010 Assessment Roll as follows:

| | |
|--------------------------|-----------------------------------|
| ROLL NUMBER: | 011378 |
| LOCATION ADDRESS: | 3604 Rollyview Road, Leduc |
| HEARING NUMBER: | 04-2010 |
| ASSESSMENT: | |

This complaint was heard on the 12th day of October, 2010 at the office of the Composite Assessment Review Board located at 1 Alexander Park, Leduc Alberta, in Council Chambers .

Appeared on behalf of the Complainant:

- W .Powers Assessor, City of Leduc

Appeared on behalf of the Respondent:

- C. Buchanan Agent, Altus Group Ltd.
- J. Trelford Agent, Altus Group Ltd.

Board's Decision in Respect of Procedural or Jurisdictional Matters:

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board advised the parties that the Board was not aware of any circumstances that would raise an apprehension of bias.

The Applicant (City of Leduc) advised the Board that the Respondent did not comply with s.295 (1) and s.295 (4) of the MGA. *The letter quotes section 295(1) and outlines the consequence of non-compliance by quoting section 295(4).*

Section 295(1) of the Act requires:

"A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed."

Section 295(4) of the Act states that:

" No person may make a complaint in the year following the assessment year under section 460 or , in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request."

In addition, the Applicant advised the Board that Matters Relating to Assessment Complaints Regulation Section 9(3) states:

"A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor."

The Applicant advised the Board that the City of Leduc sent out a request for assessment information on September 8th, 2009 and requiring the information by November 15th, 2009. The information requested was never received.

The Respondent (Altus Group Ltd.) questioned the Applicant on the confirmation of the letter being sent to the owner of the property. The Applicant stated that a copy of the land title and request for information went to the address on the title. The Applicant stated that a letter put in the mail is deemed to have been received. The Respondent (Altus Group Ltd.) stated the owner did not get the request for information and therefore could not respond to the request. The Respondent provided an e-mail that stated the address was close, but not exact and confirmed the Respondent

did not receive the letter. The e-mail was given as evidence to the Applicant and the Board.

The Respondent (Altus Group Ltd.) stated it was inconceivable to possibly ask the Respondent to respond to something the Respondent knows nothing about. The Respondent indicated there is no indication on this letter what the issues are and the Respondent only found out on October the 5th. 2009 what the municipality was referring to.

The Board asked the Respondent if the owners received the letter and the Respondent indicated the owners had not received the letter. The Board asked the Applicant if the Applicant had been sending the letter to the address marked for some time and the Applicant stated the City of Leduc had been sending the letter to the marked address for a number of years. The Respondent indicated the address was close but not exact.

The Applicant (City of Leduc) stated the Applicant did not have any argument and summary to present. The Respondent provided the Board with regulations and a legal case in the argument and summary. The Applicant voiced an objection stating the Respondent had not disclosed the evidence to the Applicant. The Respondent stated the information was not new evidence but regulations referring to "Matters Relating to Assessment Complaints Regulation," and a Court of Queen's Bench decision: Boardwalk Reit LLP. The Respondent stated that everyone should be familiar with the Boardwalk decision. The Applicant indicated that he was not familiar with the Boardwalk decision and could not be expected to review the 42 page case law and would like to request a postponement.

The Board recessed, deliberated and rendered a decision. The decision is that the information presented by the Respondent is allowed. The information is not new evidence, but regulations and public case law. The Board provided an option to the Applicant to postpone the hearing or continue the hearing. The Applicant chose to continue the hearing.

The Respondent summarized the position that since the owner did not receive the request for information, it is impossible to respond to something they did not receive. The Respondent provided the Board and the Applicant with the Boardwalk decision that states in several places the burden of proof is on the Respondent to request for information and the penalties for not complying and they are extremely harsh and should only be used in extreme circumstances. The Respondent advised the Board that the whole Boardwalk decision should be reviewed, but with special emphasis on the following sections:

- page 27 duties of fairness and natural justice - paragraph 136
- page 28 paragraph 137 - 145
- page 29 compliance and not punishment
- page 17 point 6 - paragraph 76

Under Matters Relating to Assessment Complaints Regulation

1. page 19 - section 30(3)
2. page 21 - section 40(3)
3. page 24 - section 46(3)

The Respondent advised the Board that nowhere in their submission does the Applicant make reference to anything that was requested by the assessor in terms of the subject's income statement, subject's expenses or subject's vacancy. The Respondent (Altus Group Ltd.) conceded the rental rate, the vacancy and the expense rate. The one issue is the capitalization rate and that has nothing to do with the request under section 295(4). The Respondent stated the hearing on the

merits of the case should proceed, because each of the points in the request for information is not being contested and the only issue being contested is the market capitalization rate.

In closing, the Applicant argued that the letter sent under the Municipal Government Act is deemed to have been received. The Applicant did not find the Respondent's argument valid regarding the receiving of the letter. The Applicant knows the Respondent has been provided with the rental information, but is just refusing to send it back.

Board's Decision and Reasons:

The decision of the Board is to dismiss the complaint of the Applicant (City of Leduc) and allow case number CARB-04/2010-P to proceed to a merit hearing.

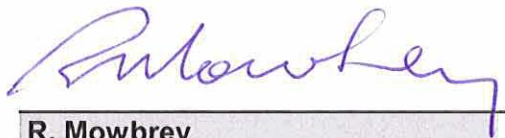
The Board was persuaded by the precedent setting "Boardwalk" decision and its implications. The decision notes that the assessor owes the taxpayer a duty of fairness, which means that the assessor should take appropriate steps to ensure the request for information is received and that the penalty for failure to comply is understood. The assessor made no extra effort to ensure receipt of the request for information.

Under "Boardwalk", the court found that the penalty of losing the right to appeal was "draconian".

The Board found that due to the slight inaccuracies in the address it was plausible that the letter was never received, considering the mail was crossing international boundaries. The Respondent provided an e-mail from the owner stating the owner did not receive the letter and erring on the side of caution, the Board would side with the taxpayer.

The Board found that under these circumstances, it is not appropriate to apply section: 295(4) of the *Municipal Government Act*.

DATED AT THE CITY OF LEDUC THIS 18th DAY OF OCTOBER 2010.



R. Mowbrey
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;

- (b) *an assessed person, other than the complainant, who is affected by the decision;*
- (c) *the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) *the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) *the assessment review board, and*
- (b) *any other persons as the judge directs.*

