CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
Y. Nesry, MEMBER
D. Julien, MEMBER

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

ROLL NUMBERS:	**381006105 & 381005107**
LOCATION ADDRESSES:	**13425 Symons Valley Road N.W.** **-and-** **3527 Sage Hill Drive N.W.**
HEARING NUMBERS:	**60329 & 60328**
ASSESSMENTS:	**$2,390,000 & 2,370,000**

These complaints were heard on the 17th day of September, 2010 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainants:

- *B. Neeson*

Appeared on behalf of the Respondent:

- *W. Wong*

Property Description:

The Symons Valley property is a single-detached dwelling on a 3.99 acre country residential parcel. The property on Sage Hill Drive is also a single-detached dwelling, but on a 3.96 acre country residential parcel. In 1989, the subject properties were annexed to the City of Calgary from the Municipal District of Rocky View. On the 24th of November, 2008, with consent of the owners, the City of Calgary re-zoned both properties from "S-FUD" (Special Future Urban Development), to low-rise multi-residential, in accordance with the City's development plans for the area. It is not known whether the re-zoning in question, or some previous re-zoning, rendered the annexation order *functus*.

Issues:

1.Does s.460.1(1) of the *Municipal Government Act* ("the *Act*") bar the complaints from being heard by a Composite Assessment Review Board?

2. Does s.11 of the *Matters Relating to Assessment and Taxation Regulation* (*"MRAT"*) apply where a property owner/complainant consented to "an action taken under Part 17 of the *Act*"?

Background

The Symon's Valley property was originally assessed at $740,000, and the Sage Hill property at $704,500 for the 2010 tax year. On March 25th, 2010, however, amended assessment notices were sent out, advising the owners that their assessments had increased to $2,390,00 and $2,370,00, respectively.

Complainant's Requested Values:

The Complainant requested that the values of the subject properties be returned to their orginal assessed values, i.e., $740,000 for the Symon's Valley property, and $704,500 for the Sage Hill Drive property, those values being fair and equitable in the circumstances.

The Panel's Decisions on the Issues:

Issue 1:

Although neither party raised this issue, the panel nevertheless considered it advisable to deal with it. It is the decision of this panel that Section 460.1(1) of the *Act* does not bar the present complaints from being heard before a Composite Assessment Review Board. In fact, a Composite Assessment Review Board is the only forum in which they can be heard. This is because the jurisdiction of Local Assessment Review Boards regarding assessment complaints is confined by s. 460.1(1) to complaints concerning: *"(i) residential property with 3 or fewer dwelling units, or (ii) farmland, or (b) a tax notice other than a property tax notice."* Composite Assessment Review Boards have jurisdiction to hear complaints with respect to all other property, save linear property: s.460.1(2).

This means that Composite Assessment Review Boards hear a greater variety of assessment complaints concerning property with substantially higher values than do Local Assessment Review Boards. That being so, is it reasonable to suppose that the legislature intended that Local Assessment Review Boards would hear complaints concerning assessments of residential property zoned for multi-residential use, and worth millions of dollars, simply because there happened to be "three or fewer dwelling units" on said property? This panel thinks not.

It is the view of this panel that the only reasonable interpretation of the meaning of s.460.1(1) is that Local Assessment Review Boards have jurisdiction to hear complaints regarding residential property that has three or fewer dwelling units, and that could *legally accommodate* (panel's italics) no more than three dwelling units. If it was intended that Local Assessment Review Boards could hear appeals involving multi-million dollar multi-residential property, what conceivable purpose would be served by limiting their jurisdiction to property containing three or fewer dwelling units? It is a rule of statutory interpretation that legislators are presumed to be rational, hence legislation must be interpreted so as to avoid absurdities. That said, it is the decision of this panel that we have jurisdiction to hear the complaints before us.

Issue 2:

Homeowners who find themselves facing an extraordinary property tax burden because the zoning of their property has changed to accommodate a more intensive use is nothing new. When similar situations arose in the past, assessors and assessment review boards sometimes relied on s.289(2)(a) of the *Act* to relieve against the harshness of assessments based on "highest and best use." They interpreted the requirement in s.289(2) that assessments must reflect the "characteristics and physical condition of the property" on December 31st of the assessment year, as meaning that the property should be assessed based on its existing use on December 31st, not its potential use. That interpretation appears to have been enshrined in Section 11 of *MRAT*, which provides as follows:

When permitted use differs from actual use

"(3) When a property is used for farming operations or residential purposes and an action is taken under Part 17 of the Act that has the effect of permitting or prescribing for that property some other use, the assessor must determine its value

(a) in accordance with its residential use, for that part of the property that is occupied by the owner or the purchaser . . . and is used exclusively for residential purposes . . ."

Obviously, the purpose of s.11 is to protect homeowners from sudden and extraordinary increases in their assessments. The next question is whether the subject properties fit within s.11.

According to the amended assessment notices, the use of the subject properties is "residential". No use other than residential is mentioned in the assessment notices, and there is no evidence of occupation of the properties by persons other than the owners, facts which support a finding that the entirety of the subject properties is occupied by the owners, and used solely for residential purposes. An action under Part 17 of the *Act* means something done pursuant to the planning provisions of the *Act*, and in particular, includes the re-zoning of land. Evidence was submitted that the owners of the properties consented to the re-zoning, and were involved in public meetings in connection with it. After the re-zoning, the owners received services from the City of Calgary.

Nevertheless, in the view of this panel, the fact the Complainants applied for or consented to the re-zoning does not negate the application of s.11 of *MRAT* to this case. Had the legislature intended to limit the application of s.11 to involuntary re-zonings, which very rarely occur in the City of Calgary, they could easily have done so.

With respect to what is meant by "permitting or prescribing for that property *some other use*" (panel's italics) in s.11, it is the the view of this panel that "some other use" would include a more intensive residential use. If, as this panel has found, the intent of s.11 is to mitigate the harshness of assessments based on highest and best use, why limit it to non-residential re-zonings, particularly in view of the fact that most re-zonings of residential land are for a more intensive residential use? Furthermore, the panel notes that in the City of Calgary's Land Use Bylaw, single-family residential use is a distinct land use in and of itself, as are more intensive residential uses, which would therefore fall into the category of "some other use" in s.11. It is the finding of this panel that s.11 of the *MRAT* Regulation applies in this case.

Decision of the Panel on the Assessments

Accordingly, the assessments of the subject properties will be reduced to the amounts of their original 2010 assessments, which were based on single-family residential use, and in the panel's view and based on the evidence, fair and reasonable. It is the decision of this panel that the assessment on Roll No. 381006105 be reduced to $740,000, and the

assessment on Roll No. 381005107 be reduced to $704,500.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF November 2010.

T. Helgeson
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.*