CALGARY
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, Section 460, Revised Statutes of Alberta 2000 (the *Act*).

between:

DUNDEAL CANADA (GP) INC., COMPLAINANT,
as represented by ALTUS GROUP LIMITED

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
Y. Nesry, MEMBER
R. Cochrane, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 067046508

LOCATION ADDRESS: 840 6th Avenue SW

HEARING NUMBER: 67889

ASSESSMENT: $19,280,000

The merits of this complaint were to be heard on the 25th day of June, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2. Instead, preliminary issues relating to the complaint were heard throughout June 25th and during the morning of June 26th. In view of this, the Board decided to issue a decision that dealt only with the preliminary issues, and what was decided with respect to them. In the event further preliminary issues are raised, or submissions on the merits are made, further decisions will follow.

Appeared on behalf of the Complainant:

- *B. Brazzell, S. Meiklejohn*

Appeared on behalf of the Respondent:

- *L. Gosselin, D. Grandbois*

Summary of the Procedural Issues, and the Board's Decisions with Respect to Them

Issue 1: *Whether Mr. Brazell will be acting in the capacity of a lawyer during the hearing.*

[1] At the outset of the hearing, Ms. Gosselin, counsel for the Respondent, raised an issue with respect to the introduction of evidence by Mr. Brazell, who, Ms. Gosselin informed the Board, is a lawyer. Ms. Gosselin further informed the Board that according to the rules of the Law Society of Alberta, lawyers are prohibited from giving evidence. Further to this, Ms. Gosselin expressed concern that Mr. Brazell would influence the Board as only a lawyer can.

[2] In response, Mr. Brazell informed the Board that he was not acting as a lawyer, but as a tax consultant. Ms. Gosselin's response was that when you're a lawyer, you're always a lawyer, but that she would be satisfied if Mr. Brazell conceded that he is a lawyer, and bound by the Law Society's Code of Conduct.

[3] Mr. Brazell confirmed that he is a lawyer, a member of the Law Society, and asserted that lawyers may engage in other activities besides the practice of law, and that the Board would be able to tell whether he is acting as lawyer, or as a tax consultant. Mr. Brazell assured the Board he was not appearing in this matter as a lawyer, and did not expect he would be seen by the Board as having special status if he did. Mr. Brazell confirmed he would not be giving evidence, and would be acting as a tax consultant during the hearing.

The Board's Decision on Issue 1:

[4] Having heard both sides of the issue, the Board decided to allow Mr. Brazell to proceed, subject to the limitations he acknowledged would govern his conduct during the hearing. The Board assured Ms. Gosselin that it would not be unduly influenced by the fact that Mr. Brazell is a member of the Bar. The Board accepted the fact that lawyers often wear other hats, and assured both parties that the Board is able to understand the difference, i.e., whether Mr. Brazell is acting as a lawyer, or a tax consultant. And further, that should Mr. Brazell make a mis-step, the Board was confident Ms. Gosselin would object.

Issue 2: *Whether there was disclosure pursuant to sections 299 and 300 of the Act.*

The Complainant's Submission:

[5] Mr. Brazell for the Complainant informed the Board that the required forms had been submitted to the Respondent. The forms requested disclosure of information pursuant to s.299 of the *Act* with respect to how the assessment of the subject property was prepared, as well as information pursuant to s.300 with respect to how assessments were prepared for properties believed to be comparable to the subject property. Meetings were held to discuss the requested information, and the Respondent provided some of the documentation requested, but by no means all.

[6] A vacancy study for the subject property was requested, as well as other studies, e.g., with respect to the non-recoverable rate, and operating costs, but the Respondent's position is that it has no obligation under s.299 to produce the information, on grounds that the requested information would "breach the confidentiality of various sources of information and is therefore prohibited by law," this despite s.301.1 of the *Act*. At a meeting, the Respondent said that certain information was available on their website, but the rest was "confidential."

[7] There is also a significant issue of fairness with respect to when information is disclosed. It often happens that certain sales data appears long after the request for information is made. Note that under MRAC, the Complainant has to disclose its evidence and argument to the Respondent 42 days before the hearing date, but the Respondent doesn't have to provide its information to the Complainant until 14 days before the hearing, and the Complainant has only a week to prepare a rebuttal to that information.

[8] In the rebuttal filed in this matter, there is information concerning the purpose and intent of Bill 23. Bill 23 was meant to improve the process, make it more transparent, to ensure fairness throughout the system. What is required in this complaint is transparency. What is needed is information that shows how the Respondent arrives at the assessment, i.e., the underlying basis of it, the derivation of cap rates, classifications, etc. The Respondent says they don't have to provide the information, they say it's "confidential," but all too often it shows up in their submission, and that is the case here.

[9] On June 21st, rent comparables, vacancy rates, and two sales were received from the Respondent. What wasn't disclosed is now to be found on pages 30 and 33, pages 35 to 37, page 39, and pages 56 and 57 of the Respondent's assessment brief. Sales not on the Respondent's web site were 744 4th Street SW, 910 7th Avenue SW, 510 5th Street SW, and 604 1st Street SW. Information pursuant to s.300 of the *Act* was requested in late March of April, but it didn't arrive until June 21st, just days before the hearing. Information requested pursuant to s.299 was also received, but again, just a couple of days ago.

[10] The intent of the legislation is to promote a more comprehensive exchange of information. Fairness is preserved by not permitting a party to rely on evidence that was not disclosed to the other party. In the interpretation of legislation, there is a presumption of coherence, expressed as a presumption against internal conflict. The *Interpretation Act*, R.S.A. 2000, c. I-8, reflects this principle:

> *10 an enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best insure the attainment of its objects.*

[11] Sections 299 and 300 of the *Act* permit assessed persons to request sufficient information to understand their assessments, and to compare their assessments to those of similar properties. Clearly, the intent of the legislation is to ensure disclosure within the timelines set out in the legislation. Section 9(4) of MRAC applies where timelines are not met. It is the only effective remedy in the *Act.* The other remedy is found in s.27.6 of MRAT, which provides for a "compliance review" by the Minister.

[12] The timelines for providing the information requested pursuant to s.299 and s.300 are prescribed in s.27.4 and s.27.5 respectively, and are 15 days in both cases. A request for a compliance review was made on May 9th, 2012, but there has been no response. The Complainant respectfully requests that the Board refuse to admit the evidence contained in certain pages of the Respondent's Assessment Brief, as referenced in Paragraph 9 hereto.

The Respondent's Submission:

[13] Ms. Gosselin for the Respondent advised the Board that Altus Group had filed the complaint on February 29th, 2012, then asked for information pursuant to sections 299 and 300 on March 30th, 2012. Ms. Gosselin informed the Board that there was a response from the Respondent, as can be seen at page 210 of Exhibit C-1. Four sales were not included because they were not used to prepare the assessment. The Complainant's request for information is outside the scope of disclosure provided in section 299 and 300.

[14] There is nothing said in s.9(4) of MRAC about a time limit of 15 days. Section 9(4) simply states that evidence from a municipality requested by a complainant under section 299 or 300 of the *Act* but not provided must not be heard by a CARB. In this case, there was full disclosure of the requested evidence, albeit only last week. If the Complainant believes there was non-compliance with section 299 or 300, the remedy is to be found in s.27.6 of MRAT. Under s.27.6, an assessed person may make a request to the Minister for a compliance review. If the Minister finds that the municipality failed to comply, the Minister can fine the municipality up to $2,500.

[15] There is no need to go further, no need to review the other provisions of the *Act* or the regulations, just s.9(4) of MRAC. By the plain wording of s.9(4), it applies only where the evidence was not disclosed. The Complainant was not "ambushed," just look at their rebuttal. The Respondent requests that the Board find the impugned evidence admissible.

The Board's Decision on Issue 2:

[16] Section 9(4) of MRAC provides that a CARB must not hear any evidence from a municipality relating to information requested by a complainant under section 299 or 300 but not provided to the complainant. There is no deadline for disclosure of information in s.9(4), nor is there reference to the fifteen day deadlines found in sections 27.4 and s.27.5 of MRAT. In this case, the Board finds that the information has been provided, hence the Board may hear the evidence referenced in Paragraph 9 hereto.

Final Submissions:

Ms. Gosselin for the Respondent:

[17] As to the Complainant's rebuttal, it is not a rebuttal at all. There is nothing to rebut. What

was put into the rebuttal was insufficient – see page 31 of the *Wood Buffalo* decision. Furthermore, paragraph 33 on page 13 of the rebuttal is misleading; the *Nortel Networks* case was decided in 2008, before Bill 23 came into effect. How could it have anything to do with the present case?

Mr. Brazzell for the Complainant:

[18] We should have had notice of Ms. Gosselin's remarks. Ms. Gosselin has sprung this on us. My integrity has been impugned. We request an adjournment. Ms. Gosselin has suggested our submissions have been deliberately designed to mislead the Board. That is an insult to me personally, and to Altus Group. I will have to consult third-party counsel. We request that this complaint be put over for some weeks, to August, or perhaps September.

Conclusion:

[19] With the consent of the parties, the Board agreed to adjourn the complaint hearing to August 6th, 2012. After the adjournment, it was discovered that August 6th was a civic holiday. Hence the Board, in the absence of the parties, changed the date to August 7th. During the hearing, the Board instructed the parties as follows:

- Altus Group is to deliver its submission with respect to the incidents referred to in Paragraphs 17 and 18 to the Respondent's Assessment Business Unit by 4:00 p.m. on July 23rd, 2012.
- Ms. Gosselin is to deliver her response to Altus Group's submission during business hours on July 31st, 2012.
- Altus Group is to deliver any rebuttal to the Respondent's Assessment Business Unit by 12:00 noon on August 3rd, 2012.

[20] With respect to the complaints on the other roll numbers scheduled to be heard on June 25, 2012, all of which were under the aegis of Altus Group, i.e., roll numbers 067022806, 067023903, 068230309, and 068230408 were put over to August 7th, 2012. The Board was advised by Mr. Meiklejohn that with respect to roll number 068230507, there was no preliminary issue, and that the matter had been settled.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF July 2012.

Presiding Officer

Exhibits

C-1, Complainant's Written Argument

C-2, Complainant's Rebuttal

R-1, Letter to Mr. R. Brazzell from Harvey Fairfield, Acting City Assessor/Director

R-2, CQBA Decision, Canadian Natural Resources Limited v. The Regional Municipality of Wood Buffalo, et al, March 14th, 2012

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Appeal type	Property type	Property sub-type	Issue	Sub-issue
CARB	Offices	unknown	disclosure	disclosure

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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.