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:

MELCOR DEVELOPMENTS
(as represented by Altus Group)

COMPLAINANT

and

The City Of Calgary

RESPONDENT

before:

T. Shandro, PRESIDING OFFICER
J. Kerrison, BOARD MEMBER
D. Morice, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBERS:	**201864642, 201864659, 201864725, 201864758, 201864774, and 201864790, respectively**
LOCATION ADDRESSES:	**11155 – 14 Street NE, 11064 – 14 Street NE, 11063 – 14 Street NE, 11135 – 14 Street NE, 11125 – 14 Street NE, 11115 – 14 Street NE Calgary, Alberta, respectively**
FILE NUMBERS:	**73801, 73802, 73803, 73804, 73805, 73806, respectively**
ASSESSMENTS:	**$1,800,000, $1,770,000, $1,640,000, $2,480,000, $3,030,000, $1,620,000, respectively**

This complaint was heard on September 6, 2013, at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- D. Mewha, Altus Group Ltd.

Appeared on behalf of the Respondent:

- N. Domenie, Assessor, The City of Calgary

Procedural or Jurisdictional Matters

[1] The hearing on September 6, 2013, concerned only a preliminary issue: whether the disclosure of the Complainant could be heard in this matter.

[2] The deadline for the Complainant to have provided its disclosure, pursuant to s. 8 of the *Matters Relating to Assessment Complaints Regulation* ("MRAC"), was July 25, 2013. The Complainant sent email correspondence at or about 5:50 pm on July 25, 2013, which the Complainant advised was intended t be the disclosure submission. The Complainant further advised that at or about 8:30 am on July 26, 2013, colleagues alerted the agent on the file, Mr. Mewha, that his email correspondence did not include the attachment. Mr. Mewha then sent the attachment at or about 9:01 am on July 26, 2013.

[3] The Respondent took the position that this disclosure was submitted late and therefore must not be heard by the Board. As such, the Respondent decided to not submit its own disclosure in this matter.

[4] If the Board decided to allow the evidence of the Complainant, the Complainant did not take the position that the hearing should proceed. The Complainant instead took the position that the hearing may be adjourned to a later date to allow the Respondent time to provide its disclosure.

[5] For the following reasons, the Board decided to allow the evidence of the Complainant and adjourn the matter to **October 16, 2013**. The parties agreed to the following dates for the further exchange of disclosure in this matter, and the Board orders accordingly:

1) The Respondent shall submit its disclosure, required pursuant to ss. 8(2)(b)(i) and (ii) of MRAC **on or before September 27, 2013**; and

2) The Complainant shall submit its rebuttal evidence, pursuant to s. 8(2)(c) of MRAC, **on or before October 4, 2013**.

[6] The Complainant acknowledged that the disclosure requirements are prescribed by ss. 8 and 9 of MRAC. The Board is prohibited from hearing evidence not disclosed pursuant to s. 8. The Complainant however argued that, in s. 10 of MRAC, the Board has the discretion to abridge or extend the dates in s. 8.

[7] The Complainant provided significant case law to support its case that an abridgement or extension pursuant to s. 10 of MRAC should be provided to a party according to the following test:

1) Did the party take immediate action;

2) Was there mischievous behaviour;

3) Is the behaviour repetitive; and

4) Were there surprise arguments arising?

[8] Most significant among the various decisions addressed by the Complainant was the decision of the Alberta Court of Appeal in *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220. The above test was determined in a 2009 decision of the Municipal Government Board, *B3LF Nominee Inc. v. Calgary (City)*, MGB 105/09 ("*B3LF*").

[9] The Complainant submitted that it did take immediate action; there is no mischievous behaviour (it is in fact seeking to provide the Respondent with time to provide its own disclosure); Mr. Mewha and the Complainant have not submitted materials late or at least not repetitively; and there are no surprise arguments.

[10] The Respondent submitted that Board should ignore the case law provided by the Complainant and argued that the test should instead be analogous to the test at s. 15 of MRAC regarding whether an adjournment or postponement may be granted by the Board: i.e., only in "exceptional circumstances". The Respondent then provided case law which related to adjournments. The Respondent further submitted that there is a lack of procedural fairness in permitting adjournments as it slows down the process, costs taxpayers and results in erroneous or incomplete decisions. Without a clear deadline, the Respondent submitted it is forced to waste resources and prepare evidence for files which it is unsure will proceed.

[11] The Board determined that the correct test should be that set out above in para. 7 and in *B3LF*. The Respondent's argument that granting discretion pursuant to s. 10 should have the same test as s. 15 is incorrect.

[12] The Board further determined from the information before it that the Complainant took immediate action, the behaviour was not mischievous or repetitive, and no surprises were arising out of the late submission of disclosure.

[13] The matter is therefore adjourned to October 16, 2013, and the parties are ordered to exchange the remaining outstanding disclosure as follows::

1) The Respondent shall submit its disclosure, required pursuant to ss. 8(2)(b)(i) and (ii) of MRAC **on or before September 27, 2013**; and

2) The Complainant shall submit its rebuttal evidence, pursuant to s. 8(2)(c) of MRAC, **on or before October 4, 2013**.

DATED AT THE CITY OF CALGARY THIS 12th **DAY OF** September, **2013.**

For **T. Shandro**

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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.