EDMONTON
Assessment Review Board

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NOTICE OF DECISION NO. 0098 25/12

Altus Group
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

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 June 20, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10008267	9412 51 AVENUE NW	Plan: 0323387 Block: 19 Lot: 5B	$4,538,500	Annual New	2012

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, RSA 2000, c M-26.

cc: ARNICO HOLDINGS (ALBERTA) LTD

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2012 ECARB 1361

Assessment Roll Number: 10008267
Municipal Address: 9412 51 AVENUE NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
Darryl Menzak, Board Member
Judy Shewchuk, Board Member

Procedural Matters

[1] When asked by the Presiding Officer, the parties did not object to the composition of the Board. In addition, the Board members indicated no bias in the matter before them.

Issues

[2] 1. Did the Complainant file the evidence disclosure within the time prescribed by the legislation?

[3] 2. If the Complainant did not file the evidence disclosure pursuant to the legislation, does the *Matters Relating to Assessment Complaints Regulation* (MRAC) provide for the abridgment of time?

[4] 3. If the Complainant did not file the evidence disclosure pursuant to the legislation and the legislation does not provide the Composite Assessment Review Board (CARB) with authority to abridge, can the CARB hear the evidence?

[5] 4. Is the 2012 assessment correct?

Legislation

[6] The *Matters Relating to Assessment Complaints Regulation* reads:

***Matters Relating to Assessment Complaints Regulation*, Alta Reg 310/2009**

s 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) The complainant must, at least 42 days before the hearing date,

(i) Disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond or to rebut the evidence at the hearing

s 9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

s 10(1) A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).

s 10(2) Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b), or (c).

s 10(3) A time specified in section 8(2)(a), (b), or (c) for disclosing evidence or other documents may be abridged with written consent of the persons entitled to the evidence or other documents.

[7] The *Interpretation Act* reads:

***Interpretation Act*, RSA 2000, c I-8**

s 22(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.

[8] The *Municipal Government Act* reads:

***Municipal Government Act*, RSA 2000, c M-26**

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

Position Of The Complainant

[9] The Complainant acknowledged that its disclosure package was filed on May 9, 2012, thus failing to meet the legislative requirements. The failure to meet the time period by one day means the Board would be required to abridge the time between the filing and hearing date by one day in order to hear the evidence provided in the disclosure package.

[10] The Complainant submitted that the Board could abridge the time by application of the principles of natural justice and fairness in as much as the legislation does not permit such a change. The Complainant submitted a 2010 CARB decision for roll number 10095568 in support of this position.

[11] The Complainant further acknowledged that the Respondent's evidence package contained a notice (R-3) that the preliminary issue of non-compliance with section 8(2) MRAC would be raised at the hearing. The Complainant also acknowledged that there was no confusion or circumstance that raised any doubt as to the filing date, the consequences of failing to meet that requirement, and that the failure to meet the date was human error.

Position Of The Respondent

[12] The Respondent submitted that the Complainant failed to file its evidence package at least 42 days before the June 20, 2012 hearing date.

[13] Section 8(2) MRAC states that the Complainant must disclose evidence, which it intends to rely, at least 42 days before the hearing date. The 42 days are determined in accordance with section 22(3) of the *Interpretation Act*, which provides that "at least 42 days" means that the day of the disclosure's delivery and the day of the hearing are not included in reaching the 42 day total. In this instance, the Respondent argued that pursuant to the Interpretation Act, the disclosure deadline fell on May 8, 2012.

[14] The Complainant's disclosure materials were submitted to the CARB on May 9, 2012, making the disclosure one day late. As a result, the Respondent argues that the CARB is subject to section 9(2) MRAC, which states that the CARB must not hear any evidence not disclosed in accordance with section 8 MRAC.

[15] In addition, the Respondent submitted a 2010 CARB decision for roll number 3061157 in support of its contention that there is no basis for the Board to hear the Complainant's evidence.

[16] The Respondent further stated that section 10(3) MRAC, which refers to an abridgment of time for section 8(2), does not apply because the Respondent has not consented in writing or orally to such an abridgment.

[17] In addition, page 4 of the Respondent's evidence package was submitted as evidence (R-2), which disclosed a notice to the Complainant that the Respondent would be raising non-compliance with section 8(2) MRAC as a preliminary issue.

[18] In conclusion, the Respondent requested the merit hearing proceed subject to the legislation in which late evidence must not be heard by the CARB.

Decision

Decision for Preliminary Matter

[19] The CARB finds that the Complainant did not comply with the legislation in filing its evidentiary materials and as a result, the CARB will not hear the Complainant's evidence.

Merit Hearing Decision

[20] Due to the CARB's decision in the preliminary matter to exclude the Complainant's evidence, the Complainant withdrew the complaint in writing. With such withdrawal before the CARB, the assessment is confirmed at $4,538,500.

Reasons For The Decision

[21] The CARB notes that the filing deadline for disclosure is based on section 22(3) of the *Interpretation Act* applied to the wording of section 8(2) MRAC. The use of the phrase, "at least 42 days" is defined to mean clear of the filing date and the hearing date. The CARB considers the wording clear and unequivocal and finds that no issue arises with regard to the filing deadline falling on May 8, 2012.

[22] The CARB notes that the wording in section 10 MRAC distinguishes between expanded and abridged time. The CARB considers it clear that what is requested by the Complainant is an abridgment or shortening of the time from 42 to 41 days from the hearing date. This time period was established by the Notice of Hearing and a late filing therefore requires a shortening, not an expansion of time for filing. The provisions in section 8 and 10 are clear insofar as the time period of 42 days cannot be abridged without written consent from the party to whom disclosure is to be made. As a result, there is no legislative authority to allow the CARB to make an abridgment of time; that lies solely with the Respondent.

[23] Moreover, the disclosure process has been developed in the legislation to ensure that each party has a clear understanding of the case they will face. The MRAC provisions indicate a high standard deemed necessary to ensure that there is no encroachment upon the time period unless the receiving party consents to an abridgment. The wording is not vague as to the consequences should either party fail to comply with the legislation, that being that the evidence must not be heard by the CARB.

[24] Following a discussion with both parties, the CARB considered the recent Alberta Court of Queen's Bench decision: ***The City of Edmonton v. The City of Edmonton Assessment Review Board and Stephen Richard Wood*** [2012 ABQB 399]. In paragraph 82 of the decision, Hillier J. stated that "the language chosen to invoke this time limit simply cannot support the exercise of an unexpressed discretion having full regard to the purpose of the legislation".

[25] The intention of the parties is not relevant. The fairness of the process lies in the preservation of the time period regardless of the reason for late filing. Moreover, no evidence has been brought forward in this matter to explain the late filing other than the Complainant, having been made aware of disclosure deadline by the Notice of Hearing, neglected to submit the documents on time.

[26] There is no provision in the Act or in the Regulation that the Complainant can rely on to support its request for fairness or natural justice despite the Complainant's intention to file disclosure on time. Moreover, the Respondent notified the Complainant that this matter would be pursued as a preliminary issue at the hearing, yet the Complainant made no request for the Respondent to consent to the late filing.

[27] The Respondent referred to a previous 2010 CARB decision for roll number 3061157 in support of its position. The 2010 decision dealt with the failure to file evidentiary disclosure pursuant to section 8(2) MRAC and the CARB in that case determined that it could not hear evidence that had not been filed in compliance with the legislation.

[28] In response, the Complainant also submitted a 2010 CARB decision for roll number 10095568 in which the CARB notes that a decision to allow filing one day late was likely due to some confusion surrounding the facts. As that Board did not reference the MRAC provisions in its decision, they did not appear to find the need to consider the impact of such provisions on the matter. Therefore, the circumstance of that decision is distinguishable from the matter currently before the CARB.

Dissenting Opinion

[29] There was no dissenting opinion.

Heard commencing June 20, 2012.
Dated this 29th day of June, 2012, at the City of Edmonton, Alberta.

_____
Lynn Patrick, Presiding Officer

Appearances:

Walid Melhem, Altus Group
for the Complainant

Bonnie Lantz, City of Edmonton
Cam Ashmore, City of Edmonton
Luis Delgado, City of Edmonton
for the Respondent