ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 332/10

Altus Group Ltd
17327 - 106A Avenue
Edmonton, AB T5S 1M7

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 September 29, 2010 respecting an application by the City of Edmonton for costs against the Complainant, Altus Group Limited. This costs application arises from merit hearings held on July 12, 2010 respecting the following properties:

Roll Number	Assessed Value	Municipal Address	Legal Description	Assessment Type	Assessment Notice for
3587185	$20,590,000	1 Thornton Court NW	Plan: 5474MC Lot: A /B/C	Annual - New	2010
9966898	$25,985,500	10222 102 Street NW	Plan: 9920847 Block: A	Annual - New	2010
9961688	$28,304,000	10235 101 Street NW	Plan: 8822518 Lot: 79C	Annual - New	2010

Before:

David Thomas, Presiding Officer
Judy Shewchuk, Board Member
Jack Jones, Board Member

Board Officer: Annet N. Adetunji

Persons Appearing: Complainant

Robert Brazzell, Altus Group
John Trelford, Altus Group
Stephen Cook (Observer), Altus Group

Persons Appearing: Respondent

Chris Hodgson, Assessment & Taxation Branch
Cameron Ashmore, Law Branch

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to the file.

BACKGROUND

The Applicant seeks costs for the time and resources expended by it in preparing a response to issues raised by the Complainant in the complaint form, but for which no disclosure was received or for which disclosure was received but the issues were withdrawn at hearing.

Additionally, the Applicant seeks costs for the attempted introduction of new evidence as rebuttal evidence at hearing and for the raising of a new issue not clearly encompassed in the issues raised in the complaint form.

LEGISLATION

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

S.468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

The *Matters Relating To Assessment Complaints Regulation* (MRAC), AR 310/2009;

S.9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

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

S.52(1) *Any party to a hearing before a composite assessment review board or the Municipal Government Board may make an application to the composite assessment review board or the Municipal Government Board, as the case may be, at any time, but no later than 30 days after the conclusion of the hearing, for an award of costs in an amount set out in Schedule 3 that are directly and primarily related to matters contained in the complaint and the preparation of the party's submission.*

(2) *In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:*

(a) whether there was an abuse of the complaint process;

(b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process.

POSITION OF THE APPLICANT

The Applicant alleges that for these complaints the Complainant, Altus Group Limited, did not, as required, set out clearly defined issues within the complaint form, but instead listed a

"boilerplate" assembly of very generalized issues that could apply to almost any or every complaint, leaving the assessor with no real direction as to what these complaints were about.

Ultimately, the Complainant did submit disclosure as required, but only on three or four of the issues alleged in the complaint form. Further, they believed that the disclosure raised one new issue, not clearly identified in the complaint form.

The Applicant further states that for some issues upon which disclosure was provided, it was not until the parties reached the hearing that the Complainant withdrew some issues from CARB consideration. They state, the pleading of issues in this manner has resulted in the Applicant unnecessarily expending both time and resources on such issues, which were then not placed before the CARB.

The assessor gave evidence that he begins work on complaints when they are received. He reviews the nature of the complaint and the property in a general manner, proceeding to a more detailed response upon receipt of the Complainant disclosure. For these three properties, the assessor states his time records indicate a total of 6.25 hours, of which he estimated 2 to 2.5 hours were in the pre-disclosure period.

The Applicant suggests costs for these issues (issues where no disclosure was made and which did not proceed to hearing), inclusive of issues upon which disclosure was made but withdrawn at the hearing, should be in the sum of $250 per roll number. While this is a relatively token amount, it is at least some measure of recompense to the Applicant for time and resources needlessly expended and a deterrent to such complaint pleadings in the future.

For the introduction of a new issue (credit card commissions as an expense), the Applicant seeks an award of $500. The Applicant believes this issue cannot be found to be revealed in an issue stating "expenses deducted were too low".

Finally, the Applicant seeks $300 for the successfully contested procedural applications brought by the assessor that the Complainant's rebuttal evidence was in fact new evidence. This sum covers all three roll numbers and is relatively nominal but the Applicant acknowledges this is a new offence under new procedure.

The Applicant states that the raising of a new issue and the attempt to introduce new evidence are not discretionary awards by the CARB, but fit within the ambit of Section 468.1 MGA; that the CARB must award costs for circumstances set out in the regulations. These two matters do, they allege, fall within the descriptions set out in Part 1 and Part 2 costs, thus the Board has no alternative but to make an award, with discretion only as to the amount.

Finally, the Applicant states that if no sanction in costs is set here, the generalized pleading of issues used here will become the norm, defeating the intention of this new assessment legislation to seek more clearly defined issues early in the process, giving the parties a better opportunity for resolution, and to narrow hearings to only those issues that the CARB is required to resolve. The Applicant believes that now is the time to "send a message" to get a properly considered listing of issues submitted in the complaint form.

POSITION OF THE COMPLAINANT

The Complainant argues the CARB should look to the totality of changes coming about in the amended assessment legislation. Agents are required to go through a new documentation of agency and a separate documentation of authority to seek disclosure. As well, in many cases, the centralizing of the release of information and determination of the appropriate request for disclosure has delayed the agent's ability to give detailed consideration to any particular property issues. Additionally, the provisions of Section 9(1) MRAC (that any issue not pled in the complaint form cannot be raised at the hearing) is a caution to agents: for the protection of the client's interest, that if there is any doubt, plead the issue and give clarification in the resulting disclosure.

Further, this being the initial year of operation with the new legislation, there is no established standard terminology or practice that a complainant can turn to in determining what is acceptable in the filing of complaints.

The Complainant states that in the filing of a great many commercial property complaints this year, the general format for the wording of the complaints has been the same as for these complaints. However, their normal practice is to add a "caveat" to their complaint form that the issues will be further clarified on disclosure. For those complaints, no applications for costs have been advanced.

For the complaints considered here, a different agent within their office did not provide such notation but Altus' expectation and experience is that, in order to avoid wasting time and effort, the assessor does little, if anything, until the provision of disclosure in any event. Altus finds it hard to understand how this assessor could have spent any real time or effort on these issues upon which no disclosure was filed.

Respecting the "new issue" of management incentives as an expense, the CARB accepted this as a legitimate expense. Indeed it formed the basis of the reduced assessment determined by the Board. It is hard to understand how this can be claimed a new issue at this point.

For the issues upon which disclosure was provided but then the issues were withdrawn at hearing; penalizing this withdrawal (when it has become apparent from the assessor's response to disclosure or from decisions of the CARB for similar issues on other files) would lead to the agent being obliged to proceed on such issues. This would be a waste of time and resources and would expose the Complainant to costs for pursuing a hearing on issues with little chance of success.

Regarding the issue over new or rebuttal evidence, this was tendered in good faith believing it to constitute legitimate rebuttal evidence. The Complainant says if every evidentiary issue requiring a procedural ruling becomes the basis for a cost application, it could inhibit the Complainant's right to consider all potential relevant evidence and to a fair process. This will bog down the system in cost conflicts that are not in the interests of a fair and expedited resolution of assessment appeals.

FINDING OF FACTS

1. Management incentive expenses was not a new issue at hearing;
2. There has been no expenditure of time and resources warranting an order in costs;

3. Neither the withdrawal of issues at hearing, nor the merit hearing finding on new versus rebuttal evidence, are matters here that constitute an abuse of process.

DECISION

The application is denied.

REASONS FOR THE DECISION

The CARB finds that the provision of Section 52(2) MRAC and the preamble to the Table of Costs Schedule 3 MRAC suggest costs to be an exceptional award, not part of the usual complaint process. Costs are intended to sanction behaviour by parties that are an abuse to, and thereby hinder, the annual complaint process. They are not intended to reward success or provide recompense for resources spent on an appeal in the absence of a finding that the party's actions at or preparatory to a hearing amounted to an abuse of process.

It was in this context that the CARB considered the three allegations of abuse warranting costs in this hearing.

Firstly, the claim that management incentive expenses is a new issue cannot stand. This facet of expenses was accepted by the CARB at hearing.

Secondly, in reviewing the cost claim for issues raised in the complaint, but for which no disclosure was filed, the CARB believes these do not warrant a cost sanction. With this being the first year of new legislation, the CARB accepts there has been some uncertainty in what was required to achieve a valid complaint. A review of the assessor's response to the issues for which no disclosure was made indicates they are substantially a general denial of such generally worded issues. They are supportive of the assessor's modest estimate of the time spent on these roll numbers prior to disclosure, but, in this initial year of new legislation, this does not constitute behaviour amounting to an abuse of process.

The suggestion by the Applicant that failure to award costs here will mean such complaint filings will become the norm is questionable. While that could happen, the CARB expects the complaint filings in subsequent years will likely reflect the results from the present year.

Those generalized issues included in the complaint appear to have done the Complainants little good, as they never proceeded to disclosure or had any significance in the determination of merit. Consequently, it is hard to understand why they would reappear, or why the assessor would expend any time on them unless they were fleshed out in disclosure. However, if such complaint pleadings continue and if the Applicant can demonstrate how this has necessarily wasted resources and/or constitutes an abuse, cost applications may yet be warranted.

Thirdly, the CARB believes the application of costs for issues upon which disclosure was made but which was withdrawn from the hearing is not warranted. There are conceivably many reasons that issues are dropped after disclosure. Perhaps the assessor's response may be persuasive, or the CARB has made subsequent rulings on the same issue. The imposition of the sanction of costs here would require the Complainant to know to near certainty the assessor's response or the CARB's likely decision prior to tendering disclosure, which is not realistic. To proceed with the issue knowing it to be of little merit would expose the Complainant to costs for the attempt. This is not supportive of an orderly and fair procedure.

Over the course of the complaint year, issues raised on many files can be resolved at early hearings and it is only appropriate that they be quickly dropped where they again appear in later hearings.

Finally, the Applicant says the attempt by the Complainant to introduce new evidence as rebuttal evidence was refused by the CARB and this attempt by the Applicant fits squarely in the Table of Costs. Moreover, this action is one that falls within Section 468.1 MGA, therefore the CARB must award costs having discretion only as to amount.

The CARB believes a more careful review of the legislation is required.

First, it is noteworthy that had the Complainant been successful and the CARB found the evidence to be rebuttal, there is no provision in the costs table for having to take that action to overcome the assessor's refusal unless the CARB made a finding that the assessor's position had little merit and constituted an abuse of process. In other words, the CARB believes costs do not arise simply by success in such an application. Indeed, rulings on evidence in one form or another, either prior to or during the course of a hearing, are not intended to be the basis for a cost award absent of a finding that a party's actions constituted an abuse of process. The threat of a cost application should not chill a party's well-intended belief to tender relevant evidence before the CARB.

To return to the analysis of where costs are to be used, these are an exceptional procedure used only when the Board finds there to be an abuse of process. In the present case, this panel of CARB heard the applications re new evidence or rebuttal and found that some were resolved promptly in the normal course of hearing, without any finding of an abuse of process.

No costs.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 29th day of October, 2010, at the City of Edmonton, in the Province of Alberta.

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Presiding Officer

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, R.S.A. 2000, c.M-26.

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cc: Municipal Government Board
Edmonton CY GP Inc.
Centre Suite Holdings Edmonton Ltd.
Sutton Place Grande Ltd.