

JURISDICTIONAL BOARD ORDER

CARB - 0203-0001/2010

IN THE MATTER OF A COMPLAINT filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

City of Lethbridge - Applicant

- a n d -

Altus Group Ltd - Complainant

BEFORE:

Members:

Paul Petry, Presiding Officer

A Jurisdictional Hearing was held on Tuesday, June 1, 2010 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property identifier	Assessed value	Owner
1-0-485-1603-0001 6092JK;1;1 1603 Scenic Hts S	1,645,000	IMMO
1-0-485-1607-0001 6092JK;1;2 1607 Scenic Hts S	1,710,000	IMMO
1-0-485-1611-0001 6092JK;1;3 1611 Scenic Hts S	1,621,000	IMMO
1-0-485-1615-0001 6092JK;1;4 1615 Scenic Hts S	2,432,000	IMMO
1-1-320-2201-0001 7510588;3;2 2201 32 Street S	4,890,600	Kanco Cumberland Towers
1-2-230-3210-0001 7610231;4;1 3210 23 Avenue S	2,095,000	IMMO
1-2-230-3310-0001 7810559;4;2 3310 23 Avenue S	1,925,000	IMMO

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2-0-075-0037-0001 7410379;1;72 37 Berkeley Place W	8,631,000	IMMO
2-0-140-0175-0001 7510445;7;3 175 Columbia Blvd W	3,492,000	IMMO
2-0-140-0600-0001 8211039;31;85 600 Columbia Blvd W	4,796,000	IMMO
4-0-420-0256-0001 5394JK;2;10 256 Mayor Magrath Dr N	2,429,000	IMMO
4-2-150-2014-0001 75LK;2;9 2014 15 Avenue N	2,282,000	IMMO
4-2-230-1304-0001 8710811;8;56 1304 23 Avenue N	2,698,000	IMMO
4-2-230-1306-0001 8710811;8;55 1306 23 Avenue N	2,698,000	IMMO
4-2-230-1308-0001 8710811;8;58 1308 23 Avenue N	2,698,000	IMMO
4-2-230-1310-0001 8710811;8;57 1310 23 Avenue N	2,418,000	IMMO

BACKGROUND

The City of Lethbridge Assessment and Taxation Department (Applicant) requested Jurisdictional Hearings with respect to the 2010 complaints relating to the 16 properties listed above, all located in Lethbridge, AB. The Altus Group has filed 2010 assessment complaints on behalf of Transglobe Property Management Services and the owners of the above noted properties. The City's application is to have the City of Lethbridge Composite Assessment Review Board (CARB) dismiss these complaints for non-compliance respecting section 295(1) of the Municipal Government Act (Act). On March 4, 2009, the Applicant (City) sent letters with attached forms for each roll number listed above to the Complainant requesting information to be used for assessment purposes as per section 295 of the Act. The City's letters indicate that the Complainant's response must be returned by May 31, 2009. The Complainant provided no response to these requests and claims not to have received the letters and the attached forms referred to by the City. The City asks the CARB to dismiss the Complainant's 2010 complaints respecting the subject properties in accordance with section 295(4) of the Act which bars complaints in the year following a failure to provide the information requested under section 295(1).

ISSUE:

Did the Complainants receive the requests for information under section 295 of the Act which the Applicant indicates were sent on March 4, 2009? If so, does the fact that the Complainants did not respond or provide any of the requested information result in a loss of right to make a complaint for the 2010 tax year?

Applicant's Position

The Applicant asserts that letters with the appropriate information request forms had been sent to Transglobe Property Management Services Ltd. at 5310 Explorer Drive, Mississauga, Ontario, L4W 5H8 on March 4, 2009. None of these letters have been returned to the City of Lethbridge by Canada Post, therefore it should be assumed that these requests were, in fact, delivered to the Complainants as was intended. Further the Applicant has used the same address for mailing the 2008, 2009, and 2010 property assessment notices and tax notices, all of which have been successfully received. As an example the 2010 Property Assessment notices were sent to the same address as above on February 26, 2010 and the same notices were attached to the 2010 complaint forms received by the City on May 11, 2020. While there is some conjecture that the Complainants did not receive the information requests, it is obvious that they were still receiving their mail at 5310 Explorer Drive, Mississauga, almost a year after the information request letters were sent. The Applicant believes that the request for information letters along with the accompanying forms were received by the Complainant but were simply not completed and returned to the City of Lethbridge.

The Applicant argued that the information requested is necessary for the Assessor to prepare an assessment for the subject properties. The subject properties represent 20% of the properties within this property type in the City of Lethbridge and therefore the data that should have been forthcoming is critical to the development of sound assessment criteria for this group of properties. The City had provided contact information and offers assistance in completing the information request form, if needed. The Complainants and their representative, Altus Group Limited, are sophisticated representatives of owners who should know the consequences of not providing the information requested under section 295(1) of the Act. The Applicant referred to MGB Board Order 126/00 and 166/03 wherein the MGB concluded that the Appellants in those cases lost their right to appeal where the property owners had not provided information requested by the municipalities making the requests. The Applicants also referred to the Alberta Court of Appeal decision Boardwalk Reit LLP v City of Edmonton and suggested that this case supports the premise that a valid request must be responded to and returned in a timely fashion.

Section 295(4) states that "no person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request". The City

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provided almost 90 days for the Complainants to respond and they did not do so, therefore the CARB should dismiss the 2010 complaints for all of the subject properties.

Complainant's Position

The Complainants indicated that they were unaware until a conversation with the Assessor on April 28, 2010 revealed that the 2009 requests for information had been sent to the Complainants by the City on March 4, 2009, however the City had not received the information requested. The City therefore indicated that it would be requesting a preliminary hearing of the CARB to consider dismissing the 2010 complaints. After an inquiry made by the Altus Group with Transglobe about the March 4, 2009 requests for information, Transglobe informed Altus that they had not received these requests and were therefore unaware of what was being requested. Transglobe also indicated that they are now located at 5925 Airport Road, Suite 700, Mississauga and future correspondence should be directed to that address. The Assessor had apparently been advised of this new address in April, 2010. The Complainant indicated that Transglobe are aware of the types of information requests that municipalities often make and take such requests seriously and respond as required. In this case, the City of Lethbridge requests simply were not received. The City suggested that the Complainants should have been aware that information requests are made early each year and therefore the Complainants should have made appropriate inquiries. In the Complainants' view this is an unrealistic expectation. If the response from the Complainants in this case as the City suggested, would represent 20% of the data for this particular property type, one would think the City would make an effort to follow up when the information was not received May 31, 2009. In that there was no follow up by the City, the Complainant questioned whether the information sought by the City was in fact necessary for the Assessor to prepare assessments for the subject properties. Assessments were in fact prepared for 2010 and assessment notices were sent respecting all of the subject properties.

The Complainants introduced several recent MGB board Orders and the Boardwalk Reit case also referred to by the Applicant. The Complainants argued that these decisions all point to a very high bar that must be met in order to succeed in removing a taxpayer's right to appeal. Boardwalk clearly sets out that the information must be necessary to prepare an assessment and this is very questionable in this case. Boardwalk also stands for the premise that the penalty must not be disproportional to the gravity of the fault or harm to the opposing party. It was argued that there is no harsher penalty to the taxpayer then to strike ones right to have their complaint heard. The MGB orders dealt directly with the issue of mailing and receipt of documentation that may impact the assessed person's right to have their complaint heard. In the Klein v City of Edmonton order the MGB makes the observation that mail does occasionally fail to arrive at its intended destination despite being correctly addressed. Either party could prove that the notice in that case did not arrive nor that the notice had actually been mailed. The MGB in that case ruled in favour of the taxpayer.

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Even though the Complainant is not able to prove that the information requests did not arrive the CARB was urged not to eliminate the Complainant's right to proceed to hearing as the penalty is indeed disproportional to the fault the City presumes to be the Complainant's.

DECISION

The first and primary issue before the CARB in this case is whether or not the City's request for information was sent and received by the Complainants. The Applicant's evidence shows all letters respecting the 16 roll numbers were dated March 4, 2009 and addressed correctly to the Complainants. The City did not; however introduce any mail log or other evidence to confirm that these letters were actually sent. The Complainant asked if the letters were sent individually or if they were batched and mailed together. The Applicant was not able to confirm one way or the other. If the letters were sent individually it would be very unlikely that all would go missing in the mail. However if they were batched together, it is possible that they may not have been mailed or if they were, that Canada Post did not deliver them to the correct address. The CARB believes that the error is not with the address on file with the City as other mail obviously reached the Complainants before and after the presumed mailing of the March 4, 2009 letters. With respect to where the onus lies in taking the initiative to follow-up on the information requests, the CARB is of the opinion that the expectation that the Complainants would take this action is not realistic. This would not be as front and center for the Complainant as it would be for the Assessor who relies on responses from property owners to develop the assessment criteria for the coming year. One would expect that missing responses from one entity holding 20% of the property within a given property type would result in a follow-up by the Assessor. Given the clarity in the Boardwalk case and others the CARB is very reluctant to impose the most severe penalty of removing the Complainant's right to proceed to hearing when there is no proof that the fault actually lies with the Complainant. The MGB in its decision *Klein v City of Edmonton* has clearly set out that where there is ambiguity as to whether a document was mailed or received the right of a taxpayer to appeal should not be struck.

The CARB has carefully reviewed all of the evidence and cases provided by the parties. The evidence is not definitive and therefore the benefit of doubt is given to the Complainant and in light of the foregoing reasons, the CARB denies the application by the City to dismiss the subject complaints. The subject complaint shall therefore be scheduled for hearing by the ARB.

It is so ordered.

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Dated at the City of Lethbridge in the Province of Alberta, this 17th day of June, 2010.

(SGD.) Presiding Officer, Paul G. Petry

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APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

<u>NO.</u>	<u>ITEM</u>
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| 1. | Exhibit 1A – City of Lethbridge Submissions |
| 2. | Exhibit 2C – Altus Group Ltd. Submissions |

<u>PERSON APPEARING</u>	<u>CAPACITY</u>
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|----|---------------------------------|
| 1. | S Dilworth – City of Lethbridge |
| 2. | O Bediako – City of Lethbridge |
| 3. | E. Comrie – City of Lethbridge |
| 4. | B Neeson – Altus Group Ltd. |