

**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(4).

**between:**

***Altus Group Ltd., COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***L. Lundgren, PRESIDING OFFICER***

***R. Deschaine, MEMBER***

***A. Zindler, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

|                          |                              |
|--------------------------|------------------------------|
| <b>ROLL NUMBER:</b>      | <b>129178505</b>             |
| <b>LOCATION ADDRESS:</b> | <b>10101 Southport Rd SW</b> |
| <b>HEARING NUMBER:</b>   | <b>60354</b>                 |
| <b>ASSESSMENT:</b>       | <b>\$ 174,210,000</b>        |

This complaint was heard on the 4<sup>th</sup> day of November, 2010 at the office of the Assessment Review Board located at 3<sup>rd</sup> Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10 and continued on the 23<sup>rd</sup> day of November, 2010, Boardroom 4.

Appeared on behalf of the Complainant:

- B. Ryan Agent for Altus Group Ltd.
- R. Brazzell Observer

Appeared on behalf of the Respondent:

- B. Duban Assessor for City of Calgary
- R. Fegan Valuation Policy Consultant
- A. Doborski Observer
- N. Domenie Observer

### **Board's Decision in Respect of Procedural or Jurisdictional Matters:**

At the outset of the hearing, the Respondent raised a preliminary matter with respect to the late filing of the Complainant's rebuttal evidence which was due on October 27<sup>th</sup>, 2010 and received on October 28<sup>th</sup>, 2010. It was not disclosed at least 7 days before the hearing in accordance with sections 8(2)(c) of the *Matters Relating To Assessment Complaints Regulation* AR 310/2009 (MRAC). Further, the composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8 of MRAC. These sections provide:

#### ***Disclosure of evidence***

**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:*

- (c) *the complainant must, at least 7 days before the hearing date, 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 rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

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

The Respondent acknowledged that they received the Complainant's rebuttal evidence six days prior to the hearing date, but the Respondent explained that they did not have sufficient time to review the rebuttal documents which have a total of 233 pages.

The Respondent presented composite assessment review board order, ARB 0959/2010-P, which deals with a late filing of rebuttal evidence. In this case, the board determined that the rebuttal evidence was late and did not accept it. The Respondent requested the board to make the same decision in respect of this matter.

The Respondent further stated that a precedent may be created if the Board hears the Complainant's rebuttal evidence which was not properly disclosed. If there is no consequence to ignoring the regulation, the regulation will be ignored.

The Complainant stated that he was trying to act reasonably but was very busy. The Complainant also stated that he filed 98 issue statements and rebuttals this year (2010), and had only two late filings. Furthermore, the Respondent municipality does not object to every late filing.

The Complainant argued that the rebuttal documents are critical to this case because they contain analyses of the Respondent's lease and assessment comparables. In the decision, ARB 0959/2010-P, the board did not accept the rebuttal evidence because the comparables were not critical to the case.

In respect of the subject property, there was a gross error in the original 2010 Property Assessment Notice which stated the assessment as \$222,110,000. That error was corrected by way of an Amended 2010 Property Assessment Notice which revised the assessment to \$174,210,000. The Complainant contends that the amended assessment is not correct, and can only be corrected by having a merit hearing with all of the Complainant's documents included.

The Complainant presented a letter dated November 4<sup>th</sup>, 2010 requesting a postponement to offer a remedy to the preliminary concern raised by the Respondent, and to allow for the additional time needed for the Respondent to respond to or rebut the Complainant's evidence at the hearing. Section 15(1) of *MRAC* states:

***Postponement or adjournment of hearing***

***15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.***

The Complainant argued that there are exceptional circumstances in this case and a postponement should be granted. The Complainant referenced part of: *Edmonton (City) v. Assessment Review Board of the City of Edmonton* [2010] ABQB 634 which expanded upon the meaning of "exceptional circumstances" in section 15(1) of *MRAC*. The Honourable Mr. Justice A.W. Germain stated that the regulation must be interpreted in such a way that the definition of exceptional circumstances cannot be so narrow and restrictive as to prevent hearings that are fair to both litigants. Exceptional circumstances are fact specific. For example, if the currently scheduled hearing date does not allow a party sufficient time to prepare, that must be an exceptional circumstance as the failure to grant an adjournment could result in a miscarriage of justice.

In *Edmonton (City) v. Assessment Review Board of the City of Edmonton* [2010] A.B.Q.B. 634, Mr. Justice A.W. Germain also stated that the *Regulation (MRAC)* must be interpreted contextually, as it is ancillary to the overarching authority given to the ARB to deal with the serious matters of municipal tax assessment. ARB decisions often have significant economic consequence. A property owner may by virtue of an erroneous assessment pay more than they should, or alternatively the City may receive less than it should. For this reason the Board must have both the power, as well exercise the power appropriately, to ensure that the parties have a fair, complete, and comprehensive hearing. By inference, this must include sufficient time to prepare.

In support of the requested postponement, the Complainant cited another authority: *Boardwalk REIT LLP. v. Edmonton (City)* [2008] A.B.C.A. No. 220 which states in part, "But allowing irrevocable unilateral assessments with no recourse to any tribunal is the largest possible penalty in a taxation statute. Even the Income Tax Act has no general penalty so draconian."

The Complainant also referenced CARB 0972/2010-P which granted a postponement and allowed the late evidence to be heard at the merit hearing.

In conclusion, the Complainant requested that the merit hearing be postponed and the rebuttal evidence be allowed at the merit hearing.

#### **Board's Decision:**

The Board finds the Complainant's excuse for the late filing of the rebuttal evidence unacceptable. Being "very busy" does not relieve the Complainant of the obligation to know the *Regulation* and abide by it. The Board will not grant the postponement or allow the late rebuttal evidence on the basis of the Complainant being too busy to submit the evidence in accordance with MRAC 8(2)(c). However, the Board will grant the postponement for the following reasons.

The subject property is a large development comprised of four suburban office buildings which was assessed incorrectly in the original 2010 Assessment of \$222,110,000. If, as the Complainant suggests, the Amended 2010 Assessment of \$174,210,000 is also incorrect, the taxpayer has the right to a fair and full hearing. This would necessarily include all relevant documentation. The Board finds that the taxpayer's right of appeal is eroded if the merit hearing excludes critical rebuttal evidence, and in the interest of providing the taxpayer a fair and full hearing, the late rebuttal evidence will be heard at the merit hearing of the composite assessment review board on November 23<sup>rd</sup>, 2010.

The Board grants the postponement on the basis of exceptional circumstances, in as much as, it is unusual to have a rebuttal consisting of 233 pages and the Respondent requires additional time to review the rebuttal evidence. The Respondent indicated that postponing this complaint until November 23<sup>rd</sup>, 2010 will allow for the review. The merit hearing is scheduled at 9:00am on November 23<sup>rd</sup>, 2010 with the agreement of the parties.

#### **Property Description:**

The subject property, known as Southport Atrium, is a 668,891 square foot parcel of land improved with four office buildings. These suburban office buildings have a total area of 871,150 square feet comprised predominantly of office space. There exists a small amount of medical dental retail space and office retail space.

| ADDRESS                 | BUILDING NAME           | NET RENTABLE AREA | QUALITY | YOC  |
|-------------------------|-------------------------|-------------------|---------|------|
| 10101 Southport Road SW | Alberta Health Services | 142,247 sq ft     | A2      | 1978 |
| 10201 Southport Road SW | Colt Engineering        | 267,946 sq ft     | A2      | 1980 |
| 10300 Southport Lane SW | Telvent                 | 225,227 sq ft     | A2      | 1981 |
| 10301 Southport Lane SW | Southport IV            | 235,730 sq ft     | A-      | 2008 |

Alberta Health Services occupies a significant portion of the office space and is exempt from taxation.

**Issues:**

1. Is the newer office component inequitably assessed using a \$25 per square foot rental rate?
2. Is the older office component inequitably assessed using a \$22 per square foot rental rate?
3. Is the subject property assessment unfair or inequitable based on the use of a 6% vacancy rate?
4. Is the assessed annual parking rate of \$1200 per stall correct?
5. Should the parking stalls held by Alberta Health Services be exempt from taxation? If so, how many stalls are held by Alberta Health Services?

The only issues that the Complainant brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on the Complaint form.

**Complainant's Requested Value:** revised request \$120,910,000

**Board's Decision in Respect of Each Matter or Issue:**

1. **Is the newer office component inequitably assessed using a \$25 per square foot rental rate?**

The Complainant argued that the subject office building, known as Southport IV located at 10301 Southport Lane SW, is not assessed equitably with comparable and competing suburban office buildings. The subject was constructed in 2008, is classified as an A- quality suburban office building and has an agreed to area of 235,730 square feet (sf). It is assessed using a rental rate of \$25 per square foot (psf).

The Complainant presented seven assessment comparables of Class A buildings that range in size from 21,177sf to 249,013sf and in age from 2000 to 2009. The original assessments for these comparables range from \$21psf to \$25psf. Two of the comparables in the southwest quadrant, 4838 Richard Rd SW and 37 Richard Way SW, were reduced by the composite assessment review board from \$25psf to \$22psf. One of the comparables in the southeast quadrant, 200 Quarry Park Blvd SE, was reduced from \$25psf to \$24psf. The average revised assessment in the southwest and southeast is \$22psf and the Complainant requested that a rental rate of \$22psf be applied to this building.

The Complainant focussed on three of the seven assessment comparables that are greater in size than 100,000sf. These assessment comparables are located at 6807 Railway St SE, 63 Sunpark Pz SE and 4838 Richard Rd SW and were assessed using rental rates of \$21psf, \$21psf and \$22psf respectively. In contrast, the subject, a 235,730 square foot suburban office completed in 2008, is assessed inequitably due to the application of the \$25psf lease rate. In order to make the subject equitable with other similar competing offices from the South Calgary

market, the Complainant requested the Board to reduce the rental rate to \$22psf.

The Respondent submitted that the subject office building is superior to all others with respect to location, available parking and accessibility. The subject property is a new building located at the intersection of Macleod Trail and Southland Drive, has a parking garage and is connected to the Southland LRT platform by a pedestrian bridge. There are no comparable suburban office buildings with the same amenities. The Respondent argued that the lease rates in the subject building demonstrate that it is a superior building. The subject's actual lease rates, with start dates of 2007 and 2008, range from \$30.49psf to \$38.54psf.

With respect to some of the statements made by the Complainant, the Respondent offers the following information:

- The Complainant indicated in his summary three comparables that were "assessed" lower than the subject. That is not correct as;
  1. 4838 Richard Rd. SW was assessed at \$25psf and \$22psf (as is the subject). This property was reduced to \$22psf by the CARB. The building is of a similar age (2006/2009) to the subject, but that is where the similarities end. The location of this property is inferior to the subject. This building has only 162 underground parking stalls.
  2. The other two comparables, 5 Richard Way SW and 6700 Macleod Trail SE, are of an inferior location to the subject as well, and neither has the same underground or structured parking.
- The Sovereign Centre located at 6700 Macleod Trail SE is the only A+ suburban office building used in evidence by both parties. The lease rates are \$25psf and \$26.50psf which supports the assessed rate of \$25psf. The CARB reduced the rate to \$22psf.

In conclusion, using the same lease rates to assess superior properties that are used to assess inferior properties distorts equity.

#### **Board's Decision:**

The Board finds all of the Complainant's assessment comparables inferior to the subject property. The Complainant's three comparables of similar size (greater than 100,000sf) are: 6807 Railway ST SE, 63 Sunpark Pz SE and Richard Rd SW. While these properties are of similar size, two comparables are in the SE quadrant and distant from the subject in another market area. The third comparable, 4838 Richard Rd SW, is in an inferior location and achieves less income. The actual rental rates for 4838 Richard Rd SW are \$26psf for space leased in 2008 and 2009, compared with the subject lease rates of \$30.49psf and \$38.54psf also leased in 2008 and 2009. The difference in rental rates between this comparable and the subject demonstrates that the marketplace deems them different.

The Board reviewed the balance of the Complainant's assessment comparables and find them to be inferior in terms of size, age or location. In decision ARB 1220/2010-P referenced by the Complainant, the rental rate for 37 Richard Way SW is \$22psf which indicates that it is an inferior property to the subject.

The Board also reviewed the lease rates of the following two properties and finds them inferior to the subject: 5 Richard Way SW (Omega Office Building) leases from \$26psf to \$30psf, and 6700 Macleod Trail SE (Sovereign Centre) leases from \$25psf to \$26.50psf.

Suburban office space that leases for between \$30.49psf and \$38.54psf, such as the subject, cannot be compared to properties with lease rates as low as \$22psf. None of the Complainant's assessment comparables are comparable to the subject property, and the Board finds no evidence of an inequity in the subject property assessment.

**2. Is the older office component inequitably assessed using a \$22 per square foot rental rate?**

The Complainant argued that the three subject buildings located at 10101 Southport Road SW, 10201 Southport Road SW and 10300 Southport Lane SW are not assessed equitably with similar buildings due to the application of a \$22psf office rental rate. The subject property's older space is an aggregate of 635,420sf among three separate buildings that range in size from 142,247sf to 267,946sf and in age from 1978 to 1981.

In support of the Complainant's contention that the older component of the subject property is assessed inequitably, the Complainant put forth five assessment comparables that range in size from 101,961sf to 322,980sf and in age from 1971 to 1981. They are: 5920 Macleod Trail SW, 555 69 Ave SW, 8500 Macleod Trail SE, 11012 Macleod Trail SE and 340 Midpark Way SE which assessments were prepared using an average rental rate of \$20.80psf. The Complainant requested that a rental rate of \$20psf be applied to the older component of the subject.

The Complainant argued that from the perspective of location, the subject and these five comparables are all situated along the Macleod Trail corridor in the South Calgary market. The Complainant has determined that the subject is assessed considerably higher than most 1970/1980 buildings along Macleod Trail. The subject's older 1970/1980 vintage office spaces are assessed for \$260psf through the application of a \$22psf lease rate. In contrast, the five comparables are assessed for \$191psf to \$247psf with assessed office rents ranging between \$16psf (ARB reduction to 5920 Macleod Trail SW) and \$21 psf.

The most recent sale of a similar vintage South Calgary suburban office is also included for the Board's consideration. Atrium VII sold in late 2008 for \$247psf and enjoys an assessment based on \$21psf rent. This property is 101,961sf in size, was built in 1981 and is located just off of Macleod Trail at Midpark Way SE. It is noted that this sale price was adjusted downward for 2.0 acres of excess land and a rebate for Lease Buy-up.

The Complainant pointed out that the Respondent's list of 2010 A Suburban Office Leases is comprised of the subject three older buildings and Southland Court & Tower, the office property located south of the subject property. Therefore, the only comparable the City has chosen to use in support of the fair and equitable application of the \$22psf rental rate is the one property to the south of the subject.

The Complainant took the position that the Southland Court & Tower is financially superior to the subject. An analysis of the assessor's lease rate evidence provided in the list of 2010 A Suburban Office Leases shows that the weighted average face rent from the subject is \$21.33psf and the weighted average face rent for the Southland Court & Tower is \$25.07psf. Both of these properties are assessed using a rental rate of \$22psf which is inequitable considering the income from each of the properties.



The Complainant stated that in the decision, ARB 1075/2010-P, the board accepted the application of a \$20 rental rate per square foot for older offices located in the South Calgary marketplace. This decision is consistent with the requested rental rate of \$22psf for the subject property. The Complainant requested that a \$20psf rental rate be applied to the older office component to render the assessment equitable with similar, competing office assessments along the Macleod Trail corridor.

The Respondent submitted that the assessor has correctly recognized the rental value difference between the new structure and the older structures by applying a lower rate to the older buildings. A rental rate of \$22psf was used to prepare the assessments of the older component of the subject property, and the actual leases in the older buildings range in value from \$21.20psf to \$30.00psf. The median lease rate for Class A suburban office in the southwest quadrant is \$25psf.

The Respondent commented on the Complainant's evidence as follows. The Respondent stated that the Complainant's equity evidence is seriously flawed; only three of the five comparable properties used by the Complainant have a parkade or underground parking. The reason that parkade and underground parking distorts the comparison is because the value of the parking spaces is added to the assessed value but the area of the parking spaces is not included in the rentable area making any attempt to compare them on a per square foot basis misleading. Obviously buildings with more underground parking will exhibit a higher assessed value per square foot. The property located at 340 Midpark Way SE has surface parking only and one third of that is slated for future development. Surface spaces are not calculated in the assessment.

#### **Board's Decision:**

The Complainant relied on five assessment comparables along the Macleod Trail corridor to establish a case of inequitable assessment. The Board reviewed these comparables and finds that two of the Complainant's assessment comparables, 5920 Macleod Trail SW and 8500 Macleod Trail SE, are inferior because they are B Class buildings and the subject buildings are A Class buildings. In addition, the comparable located at 8500 Macleod Trail SE has an average lease rate of \$17.84psf compared with the subject lease rates that range from \$21.20psf to \$30psf. The lower lease rates for the comparable at 8500 Macleod Trail SE are the best indication that the comparable is inferior to the subject.

With the elimination of the comparables located at 5920 Macleod Trail SW and 8500 Macleod Trail SE, this leaves three comparables. The remaining three property assessments for 555 69 Ave SW, 11012 Macleod Trail SE and 340 Midpark Way SE were prepared using rental rates of \$22psf, \$21psf and \$21psf. These comparables are also inferior to the subject because they have fewer parking stalls or inferior parking space. The property at 555 69 Ave SW has 228 stalls, and the properties at 11012 Macleod Trail SE and 340 Midpark Way SE have surface parking only. Given the differences between the comparables and the subject property which has approximately 1969 parking stalls, the same rental rate would not apply to all of these properties.

With respect to decision ARB 1075/2010-P, which is a complaint against the property assessment for 8500 Macleod Trail SE, it is not known what evidence and argument was before that panel of the Board. This panel of the Board will make its decision on the evidence and



argument submitted for this property complaint.

The Board finds no evidence of an inequity in the subject assessment.

**3. Is the subject property assessment unfair or inequitable based on the use of a 6% vacancy rate?**

The Complainant argued that the vacancy rate of 6% is unfair and inequitable and should be increased to 9.5% to make it equitable with similar competing properties. The Complainant submitted the Suburban Office Vacancy Study for the South which was the basis for the Altus Group 2010 CARB decisions supporting an increase to the South Calgary market vacancy rate from 6.0% to 9.5%. The study shows a median vacancy rate of 9.66% for suburban offices located in south Calgary.

The Complainant submitted an overview of third party vacancy reports for the south Calgary market place as of the second and third quarter of 2009. Evidence from Avison Young, Colliers and CB Richard Ellis all seems to concur that the vacancy rate was between 7.9% and 20.3%.

In addition to this evidence, the Complainant presented four decisions including CARB 0997/2010-P for 10325 Bonaventure Drive SE, CARB 0998/2010-P for 6700 Macleod Trail SE, CARB 1075/2010-P for 8500 Macleod Trail SE, and CARB 1069/2010-P for Horton Road SW. These four properties, based upon the ARB's decision to increase the South Calgary vacancy rate from 6.5% to 9.5%, serve as comparables to support the equitable application of the 9.5% vacancy rate to the subject property. All four properties are from the Macleod Trail corridor, like the subject property.

The Complainant argued that the CARB decisions that support the increase to 9.5% for the vacancy rate are from comparables that are located in proximity to the subject property along the Macleod Trail corridor. Alternatively, the CARB decisions that support the confirmation of the 6% vacancy rate are from properties not located near the subject property.

In consideration of the above, the Complainant requested that the vacancy rate be increased from 6% to 9.5% for the subject property.

The Respondent argued that the Complainant has provided several CARB decisions which are for properties located in other quadrants of the City and are for suburban offices in quality classes other than A or A+ where the board increased the vacancy allowance.

In contrast, the City has provided the board with 2010 decisions for Class A buildings located in southwest Calgary where the Board has not increased the vacancy. A third party report provided by the complainant actually substantiates the city's study. This CBRE study indicates a vacancy rate for the second quarter of 2009 for south suburban office Class A of 6.7%. In addition, the city has provided to this Board the 2010 City of Calgary Southwest A Class Vacancy Overview which shows a weighted mean of 4.18%. This study includes the entire inventory of 10 Class A suburban offices for which the city is able to substantiate the evidence with Assessment Request For Information forms (ARFI'S). The subject which makes up 45% of the total assessed area in this study has a vacancy of 5.9%. This is further evidence and support for confirming the 6% vacancy rate.

**Board's Decision:**

Owing to the fact that this is an equity issue, the Board reviewed the evidence of both parties to determine whether the subject property was treated in the same manner as similar properties. The subject property is a Class A suburban office building located in the southwest quadrant and is assessed using the same 6% vacancy rate as was used for all other Class A suburban office buildings in southwest Calgary.

The Board also reviewed the CARB decisions referenced by the Complainant for suburban office buildings in the southwest quadrant that were confirmed. The Board agrees with the Complainant that CARB1347/2010, CARB1393/2010 and CARB 1220/2010 decisions confirmed the vacancy rate of 6% for these properties.

The Complainant also identified CARB 1069/2010 for a property located at 9705 Horton Rd SW as an example of a decision that increased the vacancy rate to 9.5% from 6%. The Board finds no similarity between the property located at 9705 Horton Rd SW and the subject property because 9705 Horton Rd SW is classified as General Light Industrial not a suburban office building.

With respect to the CARB decisions that increased the vacancy rate from 6% to 9.5%, all of these decisions related to properties in the southeast quadrant of the city. And while the Complainant argues that the properties in the southwest quadrant and the southeast quadrant have the same vacancy rates, this is not the case based on the evidence before the Board. The best evidence of vacancy rates for A Class suburban office buildings situated in the southwest quadrant of the city is the 2010 City of Calgary Southwest Suburban Office Vacancy Study presented by the Respondent. The study shows a weighted mean of 6.47%. The Complainant's Suburban Office Vacancy Study for the South includes all suburban office buildings regardless of classification, and the study does not differentiate between the southeast and southwest quadrants of the city. The Board observes that the actual vacancy rate for the subject is 5.9% which also supports the use of the 6% vacancy rate.

In conclusion, the Complainant has provided no evidence that the subject suburban office building assessment was prepared using a different vacancy rate than other suburban office buildings in the same quadrant; nor has the Complainant provided any evidence of CARB decisions for similar properties that have increased the vacancy rate. Accordingly, the vacancy rate of 6% is confirmed.

**4. Is the assessed annual parking rate of \$1200 per stall correct?**

The Complainant argued that the 2010 City of Calgary Suburban Office Parking Rate Study fails to recognize that suburban parking rates are very site specific and are not subject to inter-property market competition. The Complainant submitted that prospective office tenants make comparative occupancy decisions regarding which office buildings to lease space from. Whereas, parking tenants do not have a reasonable comparative choice to park elsewhere because they are not the office space lessee but rather employees working in the building. The suburbs offer little opportunity for an employee to park in one building while working in another.

The Complainant provided a list of 48 parking stall leases with a total number of 926 stalls for the subject property as of January 2009. The number of parking stalls in each of the leases varies, however, 40 of the 48 parking stall leases are @ \$110 per stall per month. The average monthly rental rate for the 926 stalls is \$81.70. Based on the average monthly rental rate, the Complainant requested that an assessed annual parking rate of \$980 be applied to 1134 parking stalls. Originally, the Complainant calculated the number of stalls at 912.

The Complainant also submitted a document prepared by the Altus Group entitled the Southland Park Parking Summary which lists the number of parking stalls assigned to tenants in the four buildings. The study lists the total number of underground stalls as 945, the total number of perimeter stalls as 260, and the total number of parkade stalls as 886 for a grand total of 2091 stalls. It is noted that the study is not dated.

The Complainant explained that he did not conduct the study and did not realize that perimeter stalls are not assessed. Nor could the Complainant explain why there are 926 underground parking stalls listed in one study and 945 underground parking stalls listed in the other study. The Complainant offered a possible explanation that the parking stalls are "over leased".

The Respondent submitted the 2010 City of Calgary Suburban Office Parking Rate Study from across the city which shows a median monthly parking rate of \$109 per parking stall, and an average monthly parking rate of \$114 per stall. Regardless of the location, all suburban office parking stalls are assessed a monthly parking rate of \$100 (\$1200 per annum). The Respondent noted that the average monthly parking stall rate for the southwest is \$103, which supports the rate used to assess the subject parking stalls. The Respondent also noted that the majority of the parking stall leases from the subject property presented by the Complainant were leased for \$110 per month. The Respondent requested the Board to confirm the assessed annual parking rate of \$1200 per stall.

#### **Board's Decision:**

The Board finds that the best evidence of typical annual parking rates for the subject property are the subject leases. The majority of the subject leases are at \$110 per stall per month. The Respondent's evidence of suburban office parking that shows an average monthly rate of \$114 per stall is supportive of the signed leases for the subject. Based on this evidence, the Board confirms the annual parking rate of \$1200 per stall.

#### **5. Should the parking stalls held by Alberta Health Services be exempt from taxation? If so, how many stalls are held by Alberta Health Services?**

The Complainant argues that the taxable status of the parking held by Alberta Health Services (AHS) is incorrect and should be changed to exempt based upon a proper interpretation of the Act, previous Municipal Government decisions and equity.

The Complainant is seeking a tax exemption for the parking stalls held by Alberta Health Services under section 362 (1)(g.1) of the *Municipal Government Act (MGA)*

- (a) any interest held by the Crown in right of Alberta or Canada in Property;

(g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that received financial assistance from the Crown under any Act;

In support of the requested exemption, the Complainant referenced Board Order MGB 015/04 Palliser Health Region v. Empress (Village) that deals with the same issue of exemption under 362 (1)(g.1) of the *MGA*. This decision exempts the property from taxation because the property is used in connection with health region purposes and held by a health region.

The Complainant also referenced the authority *British Columbia (Assessor of Area No. 1-Capital) v. University of Victoria* [2010] B.C.J. No. 164, which upheld the board's decision that properties are exempt from taxation as they are being "held or used for university purposes" under section 54 of the *University Act*.

The Complainant presented ARB 0799/2010-P which is a decision to exempt the City of Calgary Police services parking stalls and confirmed that the meaning of "held" includes by way of a lease. Further, the Complainant states ARB 0799/2010-P emphasizes the importance of critically reviewing more than just the ARFI when parking stall counts and apportionment has been brought into question through the forum of an assessment complaint.

In ARB 0799/2010-P the Board accepted lease abstract evidence, and the Complainant requested this Board to rely upon parking clauses from the Alberta Health Services (AHS) lease abstracts from each building to demonstrate that the parking is held by way of a lease. The following abstracts were submitted:

- Alberta Health Services Building, 10101 Southport Road SW – one page from the Morguard March 2006- Lease Amendment Agreement, Calgary Health Region, dated June 22, 2006.  
Within this page, Section III- Parking states "The tenant shall be provided the sole use of 425 surface parking stalls immediately adjacent to the building...", and "The Tenant shall also be provided the use of 90 random parking stalls in the heated underground parkade within the project.  
Further down on the page the document states "the Tenant is Calgary Health Region and is itself in possession of and occupying and conducting its business in the whole or substantially all of the Leased". (The balance of the sentence does not appear on this page.)
- Colt Engineering Building, 10201 Southport Road SW – one page from Morguard September 2001 – Net Office, Southland Park.  
On this page, Section III- Parking states "The Tenant shall be entitled during the term of the lease to have the sole use of 41 parking stalls. These stalls may either be assigned surface stalls at \$35.00 per month or underground random parking stalls at \$70.00 per month. These rates will be fixed for the first 5 years of the term." The document also states "Additional stalls will be made available to the tenant on a month to month basis and shall be subject to availability and at then current market rates."
- Southport IV, 10301 Southport Lane SW – one page from Morguard March 2006 – Lease Amendment Agreement Calgary Health Region, dated January 22, 2007.  
This page references 326 random parking stalls in the two-level outdoor parking structure to be constructed as part of the Southland Park 4 office development (the "Parkade Stalls"). The document also references 34 parking stalls in the underground

parking facility of the building, dedicated for the exclusive use of the tenant.

The Complainant further states that they have attempted to accurately quantify the number and type of stalls allocated to AHS. In the original submission, the number of underground stalls indicated is 114 and during the hearing the Complainant revised the number of underground stalls to 144. The Complainant believes the correct number of taxable parking stalls is 1134.

In addition to the arguments in favour of granting a tax exemption for the subject parking stalls, the Complainant cited an example of a tax exemption for a parcel of land used by Alberta Health Services for parking, located at 9527 Horton Rd SW. As such, to not exempt the parking in question would not only be incorrect but also inequitable.

The Respondent stated that any exemption granted to the space held by Alberta Health Services (AHS) would have to be granted under 362(1)(g) of the Act. Many of the parking spaces held by the AHS are surface spaces which have not been calculated in the assessed value and as such are not assessed so there is no requirement to exempt them. That is not to say that the City believes that the dedicated spaces should be exempt, because landlords retain control of these spaces as evidenced by the notation on the leasing document that "landlord may adjust" and the landlord reserves the right to use a parking contractor such as Impark to manage the facility.

The Respondent questioned the Complainant about the "random parking stalls" referenced in the parking lease document, wondering about the location and number of random stalls used by AHS. The Complainant was unable to answer the question. It is the position of the Respondent that random stalls are not land held by the Crown and, therefore, not exempt from taxation.

To qualify for an exemption from taxation the person seeking the exemption must fall squarely within the four corners of the requirement for such an exemption. In this case due to the landlord's retention of much of the control of the space and the random nature of the AHS occupancy it is the City's position that the parking spaces do not qualify for an exemption.

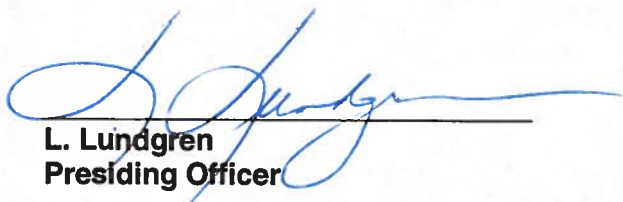
**Board's Decision:**

The Complainant has failed to establish which parking stalls are held by Alberta Health Services. There is no evidence of a complete and current lease agreement naming the parties to the agreement that identifies which parking stalls are held by Alberta Health Services and under what conditions the parking stalls are held. The excerpts from the Morguard documents for each of the three buildings are insufficient because the documents do not provide enough information about the stalls. And in the case of the excerpt from the document dated 2001, it is doubtful that it is a relevant document because of the date. Further, the Board does not accept random parking stalls as being held by the AHS because various parties may use the stalls. For these reasons, the requested tax exemption for the parking stalls held by Alberta Health Services is denied.

**Board's Decision:**

The complaint is denied and the property assessment is confirmed at \$174,210,000.

DATED AT THE CITY OF CALGARY THIS 21<sup>st</sup> DAY OF DECEMBER 2010.

  
L. Lundgren  
Presiding Officer

*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.*