

**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:**

***Remington Properties Inc. (as represented by Altus Group Limited), COMPLAINANT***

**and**

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

**before:**

***Ivan Weleschuk, PRESIDING OFFICER***

***Y. Nesry, MEMBER***

***J. Pratt, 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 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201376340</b>
<b>LOCATION ADDRESS:</b>	<b>109 Quarry Park BV S.E.</b>
<b>HEARING NUMBER:</b>	<b>68204</b>
<b>ASSESSMENT:</b>	<b>\$27,230,000</b>

- [1] This complaint was heard on the 3<sup>rd</sup> day of July, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Chabot
- Robert Brazzell (as tax agent not legal counsel)

Appeared on behalf of the Respondent:

- R. Fegan

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

- [2] Neither party objected to the panel before them. No jurisdictional or procedural matters were raised.

**Property Description:**

- [3] The subject property is a multi-tenant, three-storey office building located at 109 Quarry Park BV SE, in the Quarry Park District. It is new construction. The property has a total of 85,119 ft<sup>2</sup> of office space, and 51 parking stalls located under the building. It is zoned Industrial-Business (I-B) District.
- [4] The property is assessed using an income approach. According to the 2012 Property Assessment Notice and the Income Approach Valuation document, the total 85,119 ft<sup>2</sup> is assessed as medical/dental office space, at a rental rate of \$25/ft<sup>2</sup> and the 51 underground (enclosed) parking stalls are assessed at a rental rate of \$1,080/stall.
- [5] In August, 2011, Alberta Health Services leased 71,486 ft<sup>2</sup> and 34 underground parking stalls. As of the December 31, 2011 condition date, they were the only tenant in the building. The remaining space was being offered for lease.

**Issues:**

- [6]
1. Is the property correctly assessed? Specifically, should the office space leased by Alberta Health Services be exempt from taxation?
  2. Is the property correctly assessed? Specifically, should the parking stalls leased by Alberta Health Services be exempt from taxation?
  3. Is the property correctly assessed? Specifically, what rental rate should be applied to the area of office space not yet leased?

**Complainant's Requested Value:** \$9,912,000

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

**1. Is the property correctly assessed? Specifically, should the office space leased by Alberta Health Services be exempt from taxation?**

- [7] At the commencement of the hearing, the Respondent stated that when the 2012 assessment was prepared, the City did not realize that the tenant was Alberta Health Services. They agree with the Complainant that the Alberta Health Services is the tenant on 71,486 ft<sup>2</sup> of office space and that Alberta Health Services is exempt for taxation, pursuant to Section 362(1), which reads in part:

**362(1)** *The following are exempt from taxation under this Division:*

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

Therefore, the Respondent agreed with the Complainant that the assessment for this portion of the office space be reduced.

- [8] Given that both parties agreed that the assessment should be reduced for the same reason and by the same amount, the Board concurs. The Board concludes that office space leased by and occupied by Alberta Health Services is exempt from taxation and the assessment be reduced accordingly.

**2. Is the property correctly assessed? Specifically, should the parking stalls leased by Alberta Health Services be exempt from taxation?**

- [9] The Complainant argued that the lease agreement makes specific reference to underground parking stalls being included in the leased area, therefore the parking stalls are also exempt from taxation, similar to the office space. The assessed value of the 34 parking stalls is \$508,000 and the Complainant asked that the assessment be reduced by this amount.
- [10] Excerpts of the lease document were presented in Exhibit C1 (page 58 to 67) and the full lease document was presented in Exhibit C2 (pages 24 to 61). The Complainant referred to the lease agreement showing that the 34 parking stalls are an integral part of the lease.

- [11] The Complainant made specific reference to the wording in Section 362(1) (g.1) of the Municipal Government Act, and the phrase "held by". This is the same wording used in Section 362(1) (c) in reference to school property. A number of court decisions were presented, with the key decisions referring to school properties, where the wording "held by" was at issue. In these court decisions, and previous decisions made by this Board, the Complainant argued that a lease agreement with an exempt agency that includes parking stalls meets the test of "held by".

- [12] The Respondent described their position as follows:

*"...the owner of the parking spaces holds the spaces and since the owner of this property is not a health region under the Regional Health Authorities Act the parking spaces are not exempt from property tax." (page 9, Exhibit R1)*

To support this position, the Respondent provided a number of court decisions addressing the interpretation of words such as "held by" and "occupy" and "control". In response to questions from the Board, the Respondent acknowledged that most, if not all, the court decision pertained to business tax issues rather than property tax issues.

- [13] The Respondent also referred to the lease agreement between the owner and Alberta Health Services, and to specific clauses that apparently showed that the rights held by Alberta Health Services were different between the office space and parking stalls.
- [14] The Respondent argued that the parking stalls were likely leased to employees of Alberta Health Services, and therefore a source of revenue to Alberta Health Services and through them, to the owner of the property. The Complainant referred to the lease agreement to show that access to the 34 parking stalls was controlled by use of pass keys and that the parking stalls were dedicated to Alberta Health Services, as the parking garage was not used for paid parking after office hours.
- [15] The Board accepts the position of both parties that Alberta Health Services is exempt from taxation under Section 362(1) of the Municipal Government Act, as established in Issue 1 above.
- [16] The Board reviewed the lease agreement between Alberta Health Services and the owner and is satisfied that the 34 parking stalls are an integral part of the lease agreement. The Board fails to see any difference or distinction in the rights held by the tenant for the parking stalls, as compared to the office space. Having regard for the court cases presented, and some previous Board decisions, the Board concludes that the parking spaces are "held by" Alberta Health Services in the same fashion and to the same extent as the office space. Therefore, if the office space is exempt from taxation (as was agreed to by both parties), then it follows that the parking stalls are also exempt.
- [17] The Board concludes that the 34 parking spaces leased by Alberta Health Services are exempt from taxation under Section 361(2) of the Municipal Government Act.

**3. Is the property correctly assessed? Specifically, what rental rate should be applied to the area of office space not yet leased?**

- [18] The Complainant argued that the 51,201 ft<sup>2</sup> of unfinished office space is incorrectly assessed in the 2012 Assessment at a rental rate of \$25/ft<sup>2</sup>. This is the rate applied by the City to finished office space. The Complainant stated that in previous years, the City reduced the rental rate by \$5/ft<sup>2</sup> for unfinished office space.
- [19] The Complainant included photographs of the unfinished space (pages 35 to 38, Exhibit C1) showing that the floor and ceilings were not finished and that even some of the exterior walls were not finished.
- [20] The Complainant provided evidence to demonstrate that the City had in previous years applied the \$5/ft<sup>2</sup> reduction for unfinished office space. The Complainant also provided excerpts from the Alberta Health Services lease agreement showing a tenant improvement allowance of \$3.50/ft<sup>2</sup> (amortized over the lease term), and a recent lease agreement for another building owned by the subject owner in the same development also with a tenant improvement allowance of about \$3.50/ft<sup>2</sup>.
- [21] The Respondent agreed that the subject space was not finished, but that based on the two lease agreements, the reduction should be \$3.50/ft<sup>2</sup>. The Complainant interjected and stated that a reduction of \$3.50/ft<sup>2</sup> would be acceptable. After a short discussion between the parties, it was agreed that the rate applied to the 51,201 ft<sup>2</sup> of unfinished office space be \$21.50/ft<sup>2</sup> (\$25/ft<sup>2</sup> - \$3.50/ft<sup>2</sup>).
- [22] Given the agreement between the parties, the Board concludes that the unfinished office space be assessed at a value of \$21.50/ft<sup>2</sup>.

**Board's Decision:**

- [23] As a result of the hearing and agreements between the parties, the City requested an assessment of \$10,810,000, recognizing that the office space occupied by Alberta Health Services is exempt from taxation, the \$21.50/ft<sup>2</sup> rate for the unfinished office space, and all 51 enclosed parking stalls assessed using the typical rates for 2012. The Complainant requested an assessment of \$10,302,000 recognizing that the office space occupied by Alberta Health Services is exempt from taxation, the \$21.50/ft<sup>2</sup> rate for the unfinished office space and 17 (51 total parking stalls less 34 parking stalls leased to Alberta Health Services) enclosed parking stalls assessed using the typical rates for 2012. The difference is the \$508,000 value for the 34 parking stalls leased to Alberta Health Services. For the reasons discussed above, the Board concludes that the 2012 Assessment be reduced to \$10,302,000 which recognizes that the office space and 34 enclosed parking stalls leased by Alberta Health Services are exempt from taxation, and the rental rate of \$21.50/ft<sup>2</sup> applied to the unfinished office space.

DATED AT THE CITY OF CALGARY THIS 18<sup>th</sup> DAY OF July 2012.



Ivan Weleschuk  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
C1	Complainant Disclosure
R1	Respondent Disclosure
C2	Complainant Rebuttal

*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.*