

**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:**

***Southland Park Inc. (as represented by AEC International), COMPLAINANT***

**and**

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

**before:**

***K. D. Kelly, PRESIDING OFFICER***

***K. Coolidge, MEMBER***

***J. Kerrison, 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>129178505</b>
<b>LOCATION ADDRESS:</b>	<b>10101 Southport RD SW</b>
<b>HEARING NUMBER:</b>	<b>68420</b>
<b>ASSESSMENT:</b>	<b>\$156,290,000</b>

This complaint was heard on the 22<sup>nd</sup> and 23<sup>rd</sup> days of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 3.

Appeared on behalf of the Complainant:

- *Mr. B. Ryan* - *AEC International*

Appeared on behalf of the Respondent:

- *Mr. R. Fagan* - *Assessor – City of Calgary*

### **REGARDING BREVITY:**

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

#### **[2] Matter #1 - Number of parking spaces.**

At the commencement of the hearing the parties advised the Board that there had been a difference of opinion as to the total number of assessed parking spaces in the subject. The property had been assessed for 1,969 spaces. The parties agreed that the correct number of stalls to be assessed is 1,819 of which 697 stalls are leased to Alberta Health Services.

#### **[3] Matter #2 - Unimproved vacant office space**

During the course of the hearing, the Complainant initially raised and briefly addressed an issue regarding 43,810 square feet (SF) of potential office space, where no tenant improvements have been completed. He argued that this space should be assessed at \$15 per SF instead of the assessed \$19 per SF. Subsequently he was able to confer privately with the Respondent, and ultimately accepted that the typical vacancy allowance of 8% applied to the subject, already accounts for such conditions in the subject and similar southeast Calgary office buildings. The Respondent had clarified that a further reduction as contemplated by the Complainant, would amount to a "double reduction" which is not acceptable. Upon re-consideration, the Complainant accepted that 8% of the subject's total assessable space was greater than the 43,810 SF at issue. The Complainant withdrew this issue.

### **Property Description:**

[4] The subject is a 4-building high-rise office and parking structure complex with a total 872,395 SF of office space, and 1,819 predominantly enclosed parking spaces. The subject, known as the Southport Atrium, is located at the SW quadrant of the intersection of Macleod Trail South and Southland Drive. The complex is assessed via the Income Approach to Value, using a typical 2% parking stall vacancy; 8% office vacancy; and a 7% Capitalization rate. While the subject is valued at a grand total of \$235,748,971, there is a total of \$79,450,000 of exempt space (in two parts), largely occupied by Alberta Health Services, which reduces the assessment to \$156,290,000.

**Issues:**

- [5] 1. What is the correct "Operating Cost" (Op. Cost) value to be applied to the subject?
- [6] 2. Do the 697 parking stalls leased to Alberta Health Services qualify for an exemption from assessment and taxation under Section 362(1)(g.1) of the Municipal Government Act (MGA)?

**Complainant's Requested Value:**

- [7] Based on his initial submission, the Complainant requested the assessment be reduced to \$141,600,000.

**Board's Decision in Respect of Each Matter or Issue:****Issue #1**

[8] The Complainant argued that the operating costs (op. costs) of \$12.50 per SF applied by the Respondent to the subject in the Income Approach to Value calculation is incorrect, and should be \$14.25 per SF. He clarified that the op. costs represent the value of "common areas maintenance" and "property tax recovery" on a per square foot basis. He acknowledged that under Mass Appraisal, the City is required by statute to use "typical" values, however the typical \$12.50 per SF op. cost applied to the subject and SE Calgary "A" Class suburban offices by the Respondent, is incorrect and insufficient for the subject.

[9] The Complainant argued that because of the large size (square feet) of the subject, the best indication of op. cost value for "A" Class Suburban Office space, is in fact the subject. He provided the Rent Roll for the subject, and, identified for the Board in some detail, several "newer rent deals" (more current) and rent renewals which he suggested typically continue for five year terms. He argued that this information confirms that the op. costs for the subject are not the City's typical \$12.50 per SF but in fact are \$14.25 per SF. He advanced that several of the City's comparable properties, which were relied upon by the Respondent to calculate its typical op. cost value, are in fact not office buildings at all, but rather are industrial properties,

[10] The Respondent provided a matrix displaying the op. costs identified from several SE Calgary office properties. He clarified that the median op. cost value was \$12.11 per SF, and therefore the City decided to use \$12.50 per SF as a "typical" op. cost value in its Income Approach to Value calculations for SE Calgary offices like the subject. The Respondent offered to investigate the Complainant's assertions that several of the Respondent's comparables are invalid.

[11] Subsequent to a recess, the Respondent advised the Board that he had had an opportunity to re-examine the "typical" op. cost values he had been provided with by the City for the hearing. He concluded that he was unable to substantiate that the \$12.50 per SF value used in calculating the subject's assessment is reliable. Therefore he suggested that this matter be left with the Board for it to decide what the correct op. cost value for the subject should be.

[12] In its review of this matter, the Board considers that the best evidence before it regarding op. costs for the subject is that supplied by the Complainant. Therefore the Board will proceed to make this adjustment.

**Issue #2**

[13] The Complainant argued that the 697 parking spaces leased by the owner to Alberta Health Services should be exempt from assessment and taxation under Section 362(1)(g.1) of the Municipal Government Act (MGA). The Complainant clarified in some detail, the process for obtaining access to secured parking areas and spaces within the subject. Because his office is in the subject, he was able to

describe the procedure based on personal knowledge and experience. He clarified that once inside the secure parking area, all parking is completely random in nature, including parking leased to Alberta Health Services. There is no "assigned parking". That is, each parking stall is not specifically marked or signed for exclusive use by the tenant. On the contrary, he clarified, parking is completely random on a "first come, first parked" basis in any empty stall.

[14] The Complainant argued that because the 697 Alberta Health Services parking spaces are identified in the lease, and all are "secure" limited access parking spaces as described, then they qualify for exemption from Section 362(1)(g.1) of the Municipal Government Act (MGA).

[15] In his "Appendix D" to C-1 the Complainant provided a copy of the complete office/parking lease between Alberta Health Services (formerly Calgary Health Services) and the owner of the subject, for a building described by the Complainant as "Southland 4". The Respondent also provided a complete copy of this lease in his Brief R-1.

[16] Article 5.11 of the lease identifies the duties and responsibilities of the parties with regard to onsite parking. Article 5.11 states as follows:

"5.11 **Parking** – Any parking area or facility provided by the Landlord shall at all times be subject to the exclusive control and management of the Landlord or those whom the Landlord may designate from time to time. The Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to any parking area or facility and shall have the right from time to time:

- (a) to expand, reduce, or change the area, level, location and arrangement of the parking area or facility and to construct any parking facility;
- (b) to enforce parking charges with appropriate provisions for free parking ticket validating by tenants of the building;
- (c) to close all or any portion of the parking area or facility to such extent as may, in the Landlord's opinion, be legally sufficient to prevent a dedication thereof or the accrual of rights to any Person or the public;
- (d) to temporarily obstruct or close off all or any part of the parking area or facility for the purpose of maintenance or repair;
- (e) to do and perform such other acts in and to the parking area or facility as, in the judgement of the Landlord, shall be advisable with a view to the improvement of the convenience of and use of the Building by tenants, their employees and invitees."

[17] Schedule "B" – "Definitions" to the lease defines "parking facilities" as follows:

"**Parking Facilities**" means that part of the Project containing parking facilities with vehicular access thereto including, without limitation, parking spaces, ramps, circulation space, vehicular entrances and exits, the structural elements thereof and services, facilities and systems contained in or servicing such parking facilities."

[18] The Respondent argued however, that the lease document for the subject, as provided by both he and the Complainant, clearly establishes that Alberta Health Services does not have absolute "care and control" of the 697 parking spaces leased to them. Under the clear terms of the lease, that "control" he argued, remains firmly with the Landlord. Therefore, he asserted, the 697 parking spaces do not qualify for exemption under Section 362(1)(g.1) of the MGA.

[19] Section 362(1)(g.1) of the MGA states as follows:

**"Exemptions for Government, churches and other bodies**

**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;"

[20] In its review of this issue, the Board is of the view that absolute "care and control" of the 697 parking spaces leased to Alberta Health Services rests clearly and solely with the owner of the subject and not Alberta Health Services. There is no doubt that Article 5.11 of the lease document clearly establishes this fact. In this instance, in the Board's view, the parking spaces are not "held" by AHS as contemplated by Section 362(1)(g.1) of the MGA, rather they are "held" by the Landlord.

#### **Board Findings**

[21] The Board finds that based on the evidence presented by the Complainant, which was largely unchallenged by the Respondent, the typical "Operating Costs" (op. costs) of \$12.50 per SF as applied to the subject by the Respondent in its Income Approach to Value calculations, is incorrect and should be increased to \$14.25 per SF.

[22] The Board finds that given the requirement to increase the op. costs in the subject pursuant to Board Finding [21] above, the subject is over-assessed.

[23] The Board finds that the parties agree that the correct number of assessable parking spaces in the subject is 1,819 and not 1,969. Therefore the Board will proceed to correct the assessment accordingly.

[24] The Board finds that the 697 parking spaces leased by Alberta Health Services from the owner do not qualify for exemption from Section 362(1)(g.1) of the MGA because, in the Board's view, the parking spaces are not "held" by AHS as contemplated by Section 362(1)(g.1) of the MGA. Moreover, it is unclear to the Board in reading the lease documents, that the benefits of exemption flow back to AHS for whom exemption is intended to assist.

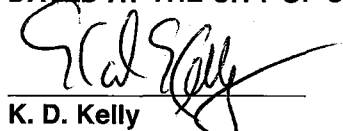
[25] The Board finds that Article 5.11 of the valid lease document between Alberta Health Services and the Landlord is clear, that "care and control" of the 697 parking spaces is firmly "held" by the Landlord and not AHS, or indeed, any of the tenants in the subject. The Complainant confirmed that while the parking is "secure" it is completely random, unassigned parking. In the Board's view, random, scramble parking is not "assigned" or "signed" or "defined" parking over which AHS exercises complete control.

[24] The Board finds that the correct, fair, and equitable assessment for the subject, given the corrections and adjustments outlined above, is \$152,000,000.

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

The assessment is corrected and adjusted and reduced to \$152,000,000.

DATED AT THE CITY OF CALGARY THIS 19 DAY OF November 2012.



K. D. Kelly  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C-1	Complainant Disclosure – including several appendices
2. C-2	Complainant Disclosure – Rebuttal
3. R-1	Respondent Disclosure
4. R-2	Respondent Disclosure

*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.*

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<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Multi-building Office	Suburban office	Market value	Parking exemption; op. costs