

**CALGARY
ASSESSMENT REVIEW BOARD
REVISED 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

Morguard Investments Ltd.
(represented by AEC International) COMPLAINANT

and

The City Of Calgary, RESPONDENT

before

L. Yakimchuk, PRESIDING OFFICER
H. Ang, MEMBER
D. Julien, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	129178505
LOCATION ADDRESS:	10101 – Southport Road SW
HEARING NUMBER:	63701
ASSESSMENT:	\$140,140,000

This complaint was heard on October 5 and 31, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 - 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *B. Ryan, AEC International*
- *A. Izard, Altus, Intervener*

Appeared on behalf of the Respondent:

- *T. Neal, City of Calgary Assessment*
- *R. Fegan, City of Calgary Assessment*

Jurisdictional and Procedural Matters:

Mr. Ryan (AEC) asked to have Mr. Izard (Altus) act as an intervener on behalf of Alberta Health Services (AHS), one of the tenants of the subject property. Intervener status was granted.

Property Description:

10101 – Southport Rd SW is a CS0302 suburban office property containing three A2-class office buildings and one A+ office building currently assessed at \$140,140,000.

Issues:

Is the rental rate equitable with the rate of other similar properties?
Is the CAP rate equitable with the rate of other similar properties?
Is AHS, a tenant of the property, exempt from taxes on parking stalls?

Complainant's Requested Value: \$103,680,000

Board's Reasons for Decisions in Respect of Each Matter or Issue:

Mr. B. Ryan, AEC, on behalf of the Complainant, presented a list of comparable sales, from 2008 and 2009, of office buildings ranging in size from 94,699 square feet to 221,667 square feet. He compared the sales prices of these buildings with the 2011 assessment values and determined that they had an Assessment to Sales Ratio (ASR) of .68 to 0.76 for an average of 0.71 and a median of 0.69.

Mr. Ryan went on to say that the low ASR was an indication that the 2011 assessment was lower than the 0.95 to 0.05 statistically acceptable ratio, and indicated that 2011 assessments were lower than their sale values. He went on to say that this lower assessment ratio did not extend to the subject.

The Complainant compared the subject to 5920 MacLeod Trail and 1167 Kensington Crescent. The current assessed rents for these buildings are \$14/sq. ft., down from the previous year's assessment of \$18/sq. ft. The subject property is assessed at a rent of \$19/sq. ft., down from last year's rate of \$22/sq. ft. The Complainant stated that the subject building rent should be

\$17, with a CAP rate of 8.75 (currently 7.5) to achieve equity with the comparables.

The Complainant also cited Municipal Government Act, Section 362(1)(g.1) which states that *The following are exempt from taxation under this Division:*

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;

Mr. Ryan stated that Alberta Health Services (AHS) *holds* parking with the offices according to the lease agreement. He went on to clarify and define the language in the MGA, Section 362(1)(g.1), in particular, "**Held**" (or **hold**) means, according to Black's Law Dictionary, "*to possess in virtue of a lawful title*".

Mr. Ryan informed the Board that AHS is a tenant of 38% of the office space and a corresponding amount of parking space in this office complex. With the help of the intervener, Mr. Izard (Altus) he explained that the offices are largely used for health service delivery, with a smaller portion for related AHS office functions. Mr. Ryan explained that parking is limited to the tenants, with a strict card lock and gating system to enforce this process. The Complainant supplied the Board with the complete Lease Agreement between Morguard and AHS.

Currently, all parking spaces in the office complex are assessed and taxed. Mr. Ryan and Mr. Izard said that the parking used by AHS should be exempt from taxation. Mr. Ryan presented the lease and lease amendments for parking for AHS. The current agreement indicates that AHS has 916 parking spaces included with their lease on the property, with some spaces on the surface and some in the parkade. The Complainant showed there is some discrepancy with numbers due to overbooking, so the rolls show 2101 parking spaces allotted, with only 1936 actual stalls available.

Ms. T. Neal, on behalf of City of Calgary, showed that the subject property improvements were A-class (A2 and A+) buildings, while the comparables presented by the Complainant were B-class buildings. A-class suburban office buildings are assessed at a CAP of 7.5% and a rent rate of \$19/sq. ft.

Mr. R. Fegan questioned the Complainant's comparison of 2008-2009 sales to current assessments. He also suggested that the Complainant's list of comparable properties (C-1a, p.47-58) had a very broad size range.

Mr. Fegan also questioned the parking exemption. He pointed out that parking is shared on the property, so that any of a group of tenants could occupy any particular space in a specific area at any time. Mr. Fegan also contended that clause 5.11 in the lease agreement states that "*any parking area or facility provided by the Landlord shall at all times be subject to the exclusive control and management of the Landlord ...*", and that this would not fit within the definition of "held" in Section 362(1)(g.1) of the Municipal Government Act.

The Board considered the evidence and accepted that the Complainant did not prove that the CAP rate or the rent rate were inequitable for this property. The evidence presented was based largely on B-class buildings that were not comparable to the A+ and A2-class subject.

The Board considered the evidence for exempting the AHS-occupied parking areas from taxation. Section 362(1)(g.1) exempts *Property used in connection with health region purposes*

and **held** by a health region. The Board understands that parking spaces used by AHS would be used in connection with health region purposes.

The lease (C-3a) states in **Article 4.00 – Rent**, that Rent includes Basic Rent, the Tenant's proportionate share of Operating Costs and the Tenant's Proportionate Share of taxes, as well as all amounts payable by the Tenant to the Landlord. Section 4.04 states: *"All amounts payable by the Tenant to the Landlord pursuant to this Lease shall be deemed to be Rent and shall be payable and recoverable as Rent."*

Hold, according to the seventh version of Black's Law Dictionary (Bryan A. Garner, editor) means (5) ... *to have an estate on condition of paying rent or performing service*. AHS is the **Tenant** of the subject property, and pays rent. **Tenant**, according to Black's Law Dictionary, is *"one who pays rent for the temporary use and occupation of another's land under a lease ..."*.

Board Findings:

By virtue of renting the property through a lease which includes a specific amount of parking, AHS *holds* the offices and the parking.

The Board confirms that AHS is exempt from all property taxation, including taxes which are charged to AHS as part of the rent on the parking stalls it holds in Southland Park. However, these things are unclear, given the information provided to the board:

1. What is the total number of parking stalls at Southpark?
2. How many of these stalls are held by AHS?

Because of this lack of clarity, it is impossible for the Board to calculate an exemption. It would be appropriate for Alberta Health Services to apply to the City of Calgary for an exemption, with proof of the number of stalls it rents, for the next assessment season.

Board's Decision:

Assessment is confirmed at \$140,140,000.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF December 2011.



Lana Yakimchuk
Presiding Officer

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

NO.	ITEM
1. C1a,b,c	Complainant Disclosure
2. C2a,b	Photographs
3. C3a,b,c	Leases
4. C4	CAP rate report
5. C5	BOMA report
6. R1	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.*

This information is for MGB Records Only

File Number	Roll Number	Subject Type	Issue	Detail	Sub-Detail
25697	129178505	CARB	Equity	Rent and CAP Rate	
			Parking Exemption		