

In the Matter of the Municipal Government Act being Chapter M26 of the Revised Statutes of Alberta 2000 (Act).

And in the Matter of an assessment complaint filed with the City of Grande Prairie's 2011 Assessment Review Board.

Between:

Points West Living GP Inc. - Complainant

-and-

City of Grande Prairie - Respondent

Before:

J. Schmidt, Presiding Officer

B. Dixon, Member

J. Monroe, Member

This is an assessment complaint decision of the Composite Assessment Review Board from a hearing held in the City of Grande Prairie on December 21, 2011 respecting a property assessment entered in the assessment roll of the Respondent municipality as follows:

| | |
|--------------------|----------------------------|
| Roll No. | 872150 |
| Legal Description | Plan 0921693 Block 7 Lot 1 |
| Assessed Value | \$25,145,500 |
| Taxable Portion | (\$19,211,200) |
| Tax Exempt Portion | (\$5,934,300) |

Appearances:

| | |
|-------------|--|
| Complainant | Mr. Lorenzo Clonfero, representing principal owner Mr. Doug Mills, Principal owner and property Managing Director Mr. Sidney Cumming, Property Appraiser |
| Respondent | Mr. Scott Smith, Assessor, City of Grande Prairie Ms. Jones, Assessor, City of Grande Prairie |

Assessment Review Board Clerk Ms. Audrey Cerny, Legislative Services Manager

Property Description

The subject 5.53 acre parcel of land was being developed as a for profit 155 unit senior's private, Long Term Care and Supportive Living facility known as Points West. As of the December 31,

2010 assessment date, three structures were in the process of being constructed. The structures include Building A which is a two storey improvement containing 60 living units. Building B accommodates 90 living units and is four storey structure. Building C is an underground parking facility which is constructed with the option of adding a future building over its footprint.

These property improvements were projected to cost approximately \$35 million and as of the assessment date it was estimated that approximately \$23 million worth of construction costs were completed.

Points West has a contract with Alberta Health Services (AHS) to provide care and services to residents of the facility. Residents who may reside at Points West include Long Term Care (60 units) and Designated Supportive Living (90 units) as defined by AHS. In addition there are five units for independent seniors requiring supportive living services which are not subject to all of the AHS contract requirements.

Background

Since the property improvements were in the progressive state of development, as of the 2010 assessment date, the replacement cost approach to market value was used for assessment purposes. The cost approach gave consideration to adding the estimated replacement costs of the improvements (structures) value to the land value for a total property assessed value. The subject 5.53 acre parcel of land transferred, in March 2009 to Points West Living GP Inc., as an estate in Fee Simple for a value consideration of \$2,543,800. This indication of land value was used together with the improvements cost of construction to December 31, 2010 of some \$23 million for a final estimate of market value of \$25,145,000. It was determined that of the 155 unit project, 60 units qualify for a tax exemption pursuant to s. 362(1)(h) of the Act. As a result a .39 tax exempt factor was established indicating a \$9,806,745 tax exemption if occupied for the full tax year. In this case, the facility was occupied for 221 days out of 365 which indicates an adjustment rate of .605 for a final 2011 tax year tax exemption at \$5,934,300.

The complaint came forward on two grounds. Firstly, the assessment is overstated in the amount equal to the grant awarded by the Provincial Government. Secondly, in addition to tax exemption allowed for the 60 units, a tax exemption should apply to an additional 90 units of the 155 unit facility.

Preliminary Matter

At the commencement of the hearing, the Respondent objected to portions of the Complainant's rebuttal submission, citing new evidence being introduced. In particular, Exhibit 2C under Tab 3, page 2 paragraph 1 and page 3 paragraphs 3 and 5. The Complainant argued that the information was provided only to assist the Board in making a decision in this matter.

The Board reserved ruling on the Respondent's objection until the evidence in chief was submitted by both parties. Prior to the Complainant entering the rebuttal submission the Board addressed the admissibility issue and ruled that Exhibit 2C, Tab 3 page 2 paragraph 1 was in fact new evidence which the Respondent could not have reasonably responded to in the allotted time

and was therefore removed from the rebuttal submission. The Board was convinced the same was true for Tab 3 page 3 paragraph 3 and therefore removed the same from the record. With respect to Tab 3 page 3 paragraph 5 the Board was satisfied this information did not extend to be considered new evidence and therefore allowed this paragraph to be part of the Complainant's rebuttal submission.

Issues

1. In calculating the estimate of market value, for assessment purposes by the cost approach to value method, is the grant awarded to Points West a non assessable cost which should be removed from the subject improvement replacement cost?
2. Is there a tax exemption available to the subject property pursuant to s. 362(1)(g.1) of the Act?

Legislation

In deciding this matter the particular legislative requirement is considered.

Municipal Government Act

1(1) In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;*
- (v) "parcel of land" means*
 - (i) where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;*

284(1) In this Part and Parts 10, 11 and 12,

- (r) "property" means*
 - (iii) a parcel of land and the improvements to it;*

289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.

(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and*
- (b) the valuation and other standards set out in the regulations for that property.*

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

The Act provides tax 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;*
- (h) property used in connection with nursing home purposes and held by a nursing home administered under the Nursing Homes Act; ...*

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

Matters Relating to Assessment and Taxation Regulation AR 220/2004 (MRAT)

1 In this Regulation,

- (f) "assessment year" means the year prior to the taxation year; ...*

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

Summary of Complainant's Position

The Complainant submitted that if Points West chose to increase rents beyond the rates established by AHS there is a requirement to pay back the grant received for the project. Since the gross income is restricted by the units' rental rate established by AHS, the property value is lower as a result. To establish a fair assessment the amount of the Provincial grant as provided should be removed from the project cost.

In addition it was requested that a tax exemption be applied to the 90 Supportive Living units pursuant to s. 362(1)(g.1) of the Act. The request was made based on the argument that Points West is subject to the control of Alberta Health Services and is therefore not only used in connection with, but also held by a health region. In support of the submission Exhibits 1C, 2C and 3C were presented and entered into the record.

In summation it was requested that the final assessed value should be \$11,609,875 when consideration is given to removing the AHS grant. With respect to the issue of tax exemption it was requested the taxable portion of the assessment should be \$804,656 and the tax exempt portion should be \$24,340,844 in the event the reduction for the grant issue is rejected.

Respondent's Position

The Respondent submitted that 21 units in Building A and 39 units in Building B which are administered as Long Term Care Units under the *Nursing Home Act* are tax exempt under the provisions of s. 362(1)(h) of the Act. It was argued that the 90 Supportive Living units referred

to by the Complainant as being tax exempt under s. 362(1)(g.1) of the Act are administered under the *Supportive Living Licensing Act* and are held under a fee simple estate land title by Points West Living GP Inc. While the subject property is used in connection with health region purposes and it may receive financial assistance from the Crown under any Act, it is not held by a health region under the *Regional Health Authorities Act* rather it is held as a fee simple estate by the Complainant. As a result, the tax exemption requested cannot be supported.

With respect to the issue of assessment reduction attributable to a grant awarded, there is no evidence in the grant agreement that states the grant is to be used to reduce the project Capital Cost. While Section 7 of the grant agreement indicates that a Schedule A provides the details on how the grant is to be used, Schedule A has not been provided in the Complainant's submission. The onus is on the Complainant to provide evidence that the Provincial grant which was awarded reduces the market value of the fee simple estate. In the absence of that evidence the cost reduction for the subject assessment should not be allowed.

In closing, it was requested that the assessment at \$25,145,500 should be confirmed and that the tax exemption portion of the assessment at \$5,934,300 should be upheld.

Exhibit 1R was presented to support the Respondent's submission.

Having given careful consideration to the evidence, argument and fact, which came forward in this case, the Board makes the following finding.

Findings

1. In determining the subject property assessment, the grant awarded to Points West is not a cost item which should be removed when calculating the estimate of market value by means of the cost approach to value.
2. The subject property does not qualify for a property tax exemption pursuant to s. 362(1)(g.1) of the Act.

Decision

The complaint as filed is not allowed for the following reasons.

Reasons

Issue 1 – Grant – Non Assessable Cost

In this case the cost approach method to market value was used by the municipal assessor to determine the assessed value.

The Board is aware that this method of estimating market value considers the replacement cost new of an improvement less a loss in value (depreciation/obsolescence) from all causes plus the land value for a total indication of property value. In this case, the land value was not at issue,

rather it was submitted by the Complainant that the grant as awarded should be considered as a loss in value to the improvement. No evidence was presented to show the subject improvement suffered physical deterioration, functional inutility or locational loss in value. Since the evidence is that a new improvement(s) is being constructed, it is difficult to accept that a grant awarded is cause for applying a loss in value.

The Board is satisfied that rather than a loss in value to the improvements, the grant was a monetary gain to the subject property owner which could be used to offset the project capital costs. The Respondent's position that the project capital costs were not reduced based on the grant awarded is accepted. The Board is convinced that there is no cause for loss in improvement value in this case and therefore the assessment reduction based on the grant awarded is not allowed.

Issue 2 – Property held by (exempt from taxation)

In this case before addressing whether or not the subject property is held by a health region it is important to firstly consider the meaning of "property" in the context of the Act. Property is defined in part as being a parcel of land and the improvement to it. A parcel of land is defined as, in part, any lot or block shown on a plan of subdivision that has been registered in a land titles office. The evidence submitted by the Respondent (Exhibit 1R, Tab 3) shows that the subject legally described property as being registered as a fee simple estate in the name of Points West Living GP Inc.

Under Exhibit 1R, Tab 9 the evidence shows the subject property owner is a wholly owned private corporate body. As a result there can be no doubt that the property in the first instance is legally held under legal title by Points West Living GP Inc. and not by a health region.

To qualify for a tax exemption under s. 362(1)(g.1) the property must be held by a health region. It is true that property may be held by owning it, leasing it or physically controlling it. The term "held by" is consistent with the overall purpose of s. 362 where property is exempted from taxation that is held by a municipality, government bodies and non-profit organizations. In this case there is no evidence within the Master Service Agreement, as submitted, that AHS (government body) has a leasehold interest in the subject property nor is there evidence that AHS has any physical control of the property. The evidence is that each living unit is occupied under a rent/lease agreement between Points West and the individual client. With respect to physical control of the property, the service provider, in part is entitled to terminate a client occupancy and retain control over who will reside in the living units. While AHS establishes the maximum unit rental rate which the service provider can charge, there is no provision which prohibits charging less than the maximum. Individuals living in a particular unit pay their own rent under a rent/lease agreement with Points West, though the rent is less than paid by private clients (5 units) for similar accommodation in the complex. Overall the evidence supports the fact that no physical control has been transferred to AHS by way of the Master Service Agreement.

The matter of held by, leasehold interest, physical control, *inter alia*, has been addressed in a number of previous Municipal Government Board (MGB) orders as well as a recent Composite Assessment Review Board decision which were entered in argument at the hearing. In particular,

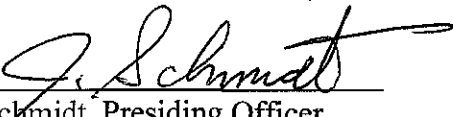
the Board will rely on MGB 088/05, as being analogues to the subject case, (Exhibit 1R, Tab 5), where these matters were dealt with in detail, as supplementary reasons in making this decision.

Accordingly, the property assessment at \$25,145,000 is confirmed with the taxable portion fixed at \$19,211,200 and the tax exempt portion fixed at \$5,934,300.

It is so ordered.

No cost to either party.

Dated at the City of Grande Prairie, in the Province of Alberta this 13th day of January 2012.


Jack Schmidt, Presiding Officer

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) 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.

470(2) 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).*

470(3) 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.*