



**ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

CARB - 0203-0003/2012

IN THE MATTER OF A COMPLAINT filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Choices in Community Living Inc (Legacy Lodge) - Complainant

- a n d -

City of Lethbridge - Respondent

BEFORE:

Members:

Tom Hudson, Presiding Officer

Kent Perry, Member

Shelley Schmidt, Member

A hearing was held on Friday, June 8, 2012 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property Identifier	Assessed Value	Owner
4-0-780-0335-0001 335 Lettice Perry Road N	\$16,181,900	Choices in Community Living Inc – Legacy Lodge

Appeared on behalf of the Complainant:

- Phil Gaudet, President – Choices in Community Living Inc.

Appeared on behalf of the Respondent:

- Otchere Bediako, Assessor, City of Lethbridge
- Lance Wehlage, Assessor, City of Lethbridge

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 4.79 acre parcel of land, located at 335 Perry Road North. The property is improved with a three-storey building of approximately 87,200 square feet. The building provides 104 residential units for senior citizens and 3 guest suites. There are 18 one-bedroom units, and 89 studio units. The units range in size from 306-400 square feet for studio, and 520 square feet for one-bedroom. There is partial basement development for electrical, mechanical and generator rooms.



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Under the Continuing Care Agreement between the subject property owner, Choices in Community Living Inc. (CCLI), and the Chinook Regional Health Authority, access for senior citizens is facilitated to all 104 units for Designated Supportive Living (DSL). Included in the total units are 24 secured studio units for dementia care, and 4 studio units for bariatric care. Amenities include wheelchair accessible units, theatre/lounge, beauty salon/barber shop, hobby/game/craft room, exercise room, as well as a spa room, lounge, fireplace and dining room on each floor. Each unit has a kitchenette, and there is a private dining room for families and guests. There are also 44 ground level parking stalls on the property.

The subject property is classified as Multi-Family Residential for assessment purposes. The residential facility, known as Legacy Lodge, is located on the southern 2.49 acres of the 4.79 parcel. The northern 2.3 acres of the parcel is vacant and has been assessed as excess land. The current assessment of the subject property is \$16,181,900: and includes \$850,900 for the excess land.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

PART C: ISSUES

The CARB considered the complaint form together with the representations and materials presented by the parties.

However, as of the date of this hearing, only the following issue is in dispute:

ISSUE: Does the subject property qualify for exemption from assessment for property tax purposes, under the provisions of Section 362(1) (g.1) of the Act?

BACKGROUND and SUBMISSIONS:

The Act provides a variety of uses and types of property that are exempt from taxation under Section 362 "Exemptions for Government, churches and other bodies." The parties to this dispute agree that Section 362(1)(g.1) which reads in part "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", is the most relevant in the current complaint.

The Respondent advised that in order for the subject property to qualify for exemption under the Act Section 362(1) (g.1), it must meet three conditions:

- 1. The property must be used for health region purposes.*
- 2. The property must be held by a health region under the Regional Health Authorities Act.*



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3. *The Regional Health Authority must receive financial assistance from the Crown under any Act.*

There is no dispute that the subject property meets the requirements of both condition #1 and condition #3. However, the Respondent argued that the subject property does not meet the requirements of condition #2 because it is not "held by" a health region under the Regional Health Authorities Act, and therefore it does not qualify for exemption.

The Complainant argued that there is a mortgage on the subject property held by the health authority as security for their financial contribution to the cost to design and construct the facility. In addition there is a Continuing Care Agreement between the Chinook Regional Health Authority and CCLI that allows the health authority to control rental rates, and to admit, transfer and discharge residents. In combination these factors are compelling evidence that the subject property is "held by" the Health Authority and therefore qualifies for exemption.

CARB FINDINGS:

1. *CICL is a private for-profit corporation registered in Alberta and is the registered owner holding the fee simple estate interest in the subject property.*
2. *Legislation and case law in Alberta have determined that for a property used in connection to a health region purpose to be considered "held by" an entity other than the actual owner, it must be held by lease, license or permit, or by exercising actual physical control over the property.*
3. *The Alberta Provincial Government Ministerial Order No. L:005/11 exempted properties accommodating seniors and owned by non-profit organizations. No such exemption was granted to properties owned by for-profit organizations.*
4. *The mortgage agreement between the Health Authority and CICL, Section 6(b) requires the CICL to pay all taxes. The Continuing Care Agreement between CICL and the Health Authority also lists a property tax expense in the operating budget, (Page 41 Exhibit R1).*
5. *Under the Continuing Care Agreement, the health authority does the needs assessment and referral to the CICL, but the month to month tenancy agreement is between CICL and the resident seniors.*
6. *The health authority control over the monthly rental fees for accommodation charged by CICL to residents, does not transfer physical control, or any ownership rights for the subject property to the health authority.*
7. *The Continuing Care Agreement states that "the Contractor (CCLI), is willing to provide programs and services for the Authority (CRHA) and that the Authority (CRHA) is willing to assist with partial funding of the construction of the Facility". This agreement removes the CRHA from any "held by" arrangement with the Contractor. The Complainant did not provide any written documentation from the CRHA to confirm their physical "control" of the*



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Legacy Lodge facility. In addition, CRHA representatives did not attend the hearing to clarify the relationship.

8. *The Continuing Care Agreement does not constitute a lease and is not a substitute for a lease of the subject property.*

Decision on the Issue

In view of the above considerations, the CARB finds that the subject property does not qualify for exemption from property assessment for taxation purposes under the Act Section 362 (1) (g.1).

PART D: FINAL DISPOSITION OF COMPLAINT

The complaint is denied and the assessment is confirmed as follows.

Roll No./Property Identifier	Assessed Value	Owner
4-0-780-0335-0001 335 Lettice Perry Road N	\$16,181,900	Choices in Community Living Inc – Legacy Lodge

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 29th day of June, 2012.

Tom Hudson, Presiding Officer



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APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

NO. ITEM

Exhibit C1 Complainant Disclosure
Exhibit R1 Respondent Disclosure

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING- CAPACITY

1. Mr. Phil Gaudet, President, Choices in Community Living Inc., for the Complainant
2. Mr. Otchere Bediako, Assessor City of Lethbridge, for the Respondent

CARB - 0203-0003/2012 Roll # 4-0-780-0335-0001 For MGB Office Use Only.

Subject	Type	Sub-type	Issue	Sub-Issue
CARB	Residential	Institutional	Exemption	Health Governance