

**IN THE MATTER OF A COMPLAINT** filed with the City of St. Albert *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:**

Rosedale Developments, 1311387 Alberta Ltd. - Complainant represented by Lorenzo Clonfero

- a n d -

City of St. Albert - Respondent represented by Stephen Bannerman

**BEFORE:**

Members:

**J.P. Acker**, Presiding Officer

**G. Godziuk**, Public Member

**P. Hartman**, Public Member

A hearing was held on November 1, 2011 at the City Hall Council Chambers in the City of St. Albert in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

<b>Roll Number:</b>	<b>125205</b>
<b>Civic Address:</b>	<b>20 Hebert Road</b>
<b>2011 Assessment:</b>	<b>\$ 18,493,000</b>

## **PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

### **The Grounds of Appeal:**

The assessment notice identifying the above facts was mailed June 30, 2011. The Complainant, Rosedale Developments, 1311387 Alberta Ltd. filed a complaint against the assessment July 29, 2011. At issue is whether or not a portion of the subject property should be exempt from taxation under the provisions of section 362(1)(g.1) of the Municipal Government Act. Portions of the subject property are utilized to provide Designated Supportive Living accommodation for persons assessed as eligible by Alberta Health Services (AHS).

### **Property Description:**

The subject property is a 133,051 square foot multi family complex located at 20 Hebert Road in the City of St. Albert. The complex includes a total of 148 units plus common areas including food services, resident's lounge, beauty salon, craft room, meeting room, chapel and an exercise area. It is served by a 27 stall parkade and 80 surface parking stalls on a paved parking lot. The grounds are landscaped and a small gazebo and garbage enclosure are incorporated into the design. A total of 70 units are contracted to Alberta Health Services. 56 units are designated as supported living suites and 14 are designated as enhanced spaces – both groups comprising the Designated Supportive Living complement. All 70 units are made available by Rosedale Developments to clients qualified by Alberta Health Services, under a Master Services Agreement entered into on April 1, 2010 for a five year period which can be extended by mutual agreement of the parties.

## **PART B: PROCEDURAL OR JURISDICTIONAL MATTERS**

The St. Albert Composite Assessment Review Board derives its authority to hear and decide appeals under Part 11 of the Municipal Government Act of Alberta.

There were no procedural issues raised by either of the parties.

## **PART C: PARTY POSITIONS**

The Complainant provided evidence and testimony supporting his contention that the subject property should be exempt from taxation under the provisions of section 362(1)(g.1) which states in part:

### ***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;*

The Complainant referred to the Master Services Agreement (contained in the Respondent's disclosure R-1) and provided numerous references in his testimony demonstrating that Alberta Health Services exercises significant control over the contracted units in the Rosedale complex. The Complainant states that the Master Services Agreement provides AHS with more control over the property in question than the agreements referred to in previous board orders cited in the Respondent's disclosure R-1. This control

includes the exclusive right to assign units to individuals listed on Alberta Health Services waiting lists for Supportive Living Accommodation. Numerous clauses of the Master Services Agreement provide Alberta Health Services oversight and control of the care provided to their clients in the Rosedale complex and the right to inspect the facility, services and staff to ensure that Alberta Health Services standards and policies are followed. Provisions cited by the Complainant in support of his argument include:

- Funding to the Complainant is based on number of suites not hours of service provided to the client
- AHS may suspend payment of any amounts at any time that a Designated Access Space is not made exclusively available to AHS
- Designated Access Spaces are defined under the Master Services Agreement as “those AHS funded designated supportive living spaces for care and accommodation to be provided to AHS at the facility for SL4 and EDAL clients who have been assessed through AHS coordinated access single point of entry process”
- “The Service Provider shall not change the designation of any Designated Access Spaces without the prior written consent of AHS” and if consent is provided to the suites being made available for private clients, “AHS is entitled to re-establish exclusive access to previously classified Designated Access Spaces upon availability...”
- AHS requires general liability insurance for the building
- AHS has the right to inspect the premises and equipment
- Accommodation costs for Designated Access Spaces cannot be more than the rates set by AHS
- “The Service Provider shall make the entire Facility... available to accommodate the Clients”
- “The Service Provider shall not assign, sublet, transfer, dispose, mortgage, charge part with or share possession of any part of the facility... to any person without the written consent of AHS”

The Complainant submits that the provisions as a whole are tantamount to AHS holding the property in a manner similar to a leaseholder.

The Complainant also points out that the Lease (Admission) Agreement between the Respondent and Residents provides that the Respondent and AHS may terminate the Lease Agreement for the reasons and in the manner provided in the Lease Agreement.

The Complainant thus concludes that Alberta Health Services exercises sufficient control over the 70 units contracted to fulfill the intent of MGA s362 (1)(g.1) to ‘hold’ the subject property as required by the Act.

The Respondent provided a detailed evidence package including the Master Services Agreement referenced by the Complainant, the Lease (Admission) Agreement for Designated Assisting Living and case law of two Municipal Government Board Orders (MGB 088-05 and MGB 09-08). Further, the Respondent provided copies of a Land Titles search of the subject and a Corporate Registry search of the Complainant corporation.

Both parties agreed that the assessment quantum is not at issue. The single issue is that portion of assessment for the 70 Alberta Health Services contracted units which are claimed as exempt from taxation under the provisions of s362(1)(g.1) of the MGA.

Both parties agree that the property is used in connection with health region purposes. Central to this remaining issue is the question as to what constitutes ‘held by’ in s362(1)(g.1). Accordingly, the

Respondent provided the Board with an extensive review of the case law contained within the referenced MGB Board Orders.

MGB Board Order MGB 088/05 reached the following conclusion:

***Conclusion***

*Overall, the Appellant has retained control of its property. The Appellant owns the property in question and neither the Agreements nor the DAL Standards Guide transfer control of the property to CHA (Capital Health Authority). The Appellant may terminate the Agreements on fairly short notice and do whatever it wants to do with its property. CHA has no financial or proprietary interest in the property and has not attempted to control the property. The Appellant is responsible for maintenance of the property and may determine who will live in DAL Spaces and, subject to a few restrictions by CHA, the terms of tenancy.*

MGB Board MGB 090/08 resulted from a court challenge to an earlier MGB Decision dated July 26, 2005. The MGB chose to rely solely on the exemption claimed under section 362(1)(g.1) and did not address any of the other issues presented. The Court of Queen's Bench determined that the MGB had "erred in extending the test of 'held by' beyond physical control" The MGB decision was thus quashed. Upon appeal to the Court of Appeal, "the Court of Appeal held that even on a reasonableness standard the MGB failed to draw any distinction between the word control and physical control. The order for the MGB to hold a new hearing was upheld."

In the new hearing MGB 090/08, the following was determined:

***SUMMARY OF FINDINGS***

*... the MGB made the following findings:*

*... Issue 2 – section 362(1)(g.1)*

*(a) Vista Village receives funding from the Crown.*

*(b) The CRHA (Chinook Regional Health Authority) is not in physical control of the property.*

The Respondent submitted that there is no evidence of ownership of the subject property by AHS and that the current contract between AHS and the Complainant is for the provision of personal care and support services. The Complainant has the independent ability and responsibility to charge for accommodation. The actual lease is between the property owner and the person occupying the unit.

**FINDINGS:**

1. A portion of the Rosedale complex is used in connection with health region purposes but is not held by Alberta Health Services as required under s(362(1)(g.1). Therefore no part of the subject property is exempt under s. 362(1)(g.1) MGA.

**REASONS:**

The Complainant's argument and testimony focused on the contract requirements of the Master Services Agreement between Rosedale and Alberta Health Services. The Board reviewed this agreement in detail and determined that it included numerous requirements for the provision of services and for the design and maintenance of the living units. It did not, however, extend to the control of the individual leases required to be executed by Alberta Health Services clients with Rosedale as the landlord.

Legislation and case law point to the difficulty in determining the level of control necessary to establish that a property is 'held by' an entity other than the actual owner. Holding a property through lease,

license or permit – or exercising actual physical control over the property; are standards that must be met to give effect to the ‘held by’ provision of s362(1)(g.1).

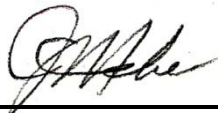
Clearly, Alberta Health Services exercises control over the pool of eligible tenants for the 70 DAL spaces at Rosedale. Clearly, it exercises - through contract - control over the quality of services and safety of accommodation provided by Rosedale. Alberta Health Services, however, does not exercise physical control over the DAL suites; as this function rests with Rosedale in executing individual leases with the tenants and enforcing the resident’s obligations under those leases. While the Master Services Agreement provides for a reduction of fees if units are not made available as required under the Agreement, there is no evidence that AHS can occupy designated units or exercise remedies enabling it to seize physical control over the designated units. Physical control is not established by providing that services payments are determined by the number of units occupied by AHS eligible clients. Taken as a whole, the Master Services Agreement does not provide AHS with an interest as owner or leaseholder; or with physical control of the subject property. The arrangement can be more accurately described as one in which the Respondent agrees to hold a number of units available for eligible AHS clients.

The Board could find no support in case law for determining that any party other than the owner and the residents occupying the suites meets the requirements of legislation to ‘hold’ the property as required under 362(1)(g.1).

Accordingly, the Board confirms the assessment at \$ 18,493,000

It is so ordered.

Dated at the City of St. Albert this 4<sup>th</sup> day of November, 2011.



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J. P. Acker, Presiding Officer

**APPENDIX "A"**

**DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:**

- 1A Evidence Submission of the Complainant
- 2R Evidence Submission of the Respondent
- 2A Rebuttal Submission of the Complainant

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Residential	Walk-Up Apartment	Tax Exempt	DAL Accommodation