

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2013 ECARB 00948

Assessment Roll Number: 3747912
Municipal Address: 8901 112 Street NW
Assessment Year: 2013
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Willard Hughes, Presiding Officer
Pam Gill, Board Member
Taras Luciw, Board Member

Procedural Matters

[1] The parties had no objections to the composition of the panel. No bias was declared by the panel.

[2] At the request of the City, the parties affirmed to tell the truth.

Preliminary Matters

[3] There were none.

Background

[4] The subject property is HUB Mall & Residence at the University of Alberta. The Commercial Retail Units (CRU) include the University's School of Business, the Faculty of Extension, Campus Security, a number of restaurants and medical facilities, space for its sister institution, Athabasca University and other general retail and offices. It was constructed in 1972 and has a gross building area of 380,908 square feet. 10% of HUB mall is comprised of a Retail portion and this complaint is with regard to 63.7% of it.

Issue(s)

[5] Is the 63.7% of the 10% Retail portion "used in connection with educational purposes" and therefore exempt from taxation?

Legislation

[6] The *Municipal Government Act, RSA 2000, c M-26*, reads:

s 362(1) The following are exempt from taxation under this Division:

(d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:

(i) the board of governors of a university, technical institute or public college under the *Post-secondary Learning Act*;

Position of the Complainant

[7] The Complainant presented written evidence (Exhibit C-1, 355 pages) and oral argument for the Board's review and consideration.

[8] A number of photographs were submitted showing the types of businesses and services located in HUB Mall (C-1, pages 7-34).

[9] HUB Mall has a variety of restaurants, general retail and office space. It also houses the School of Business, Faculty of Arts, Faculty of Extension, Campus Security, Athabasca University and medical facilities. There is also a student residence on the premises.

[10] The Complainant submitted that HUB Mall is held by the Governors of the University of Alberta as is required under section 362(1)(d)(i) of the MGA. They are listed on the Assessment Notice (C-1, page 55) and Land Titles (C-1, pages 56-66).

[11] The Complainant also submitted court decisions that have held that the fee simple ownership will meet the requirements of the property being "held by" the institution.

[12] The Complainant submitted that the retail portions of HUB Mall should be exempt as they are "used in connection with educational purposes." It was argued that "educational purposes" should be interpreted broadly, that education is not restricted to classroom instruction time but is experienced through campus life. Offices, retail stores and restaurants are part of that experience.

[13] The Complainant submitted that universities provide more than just a collection of learning facilities; rather they also provide diverse services and facilities to cater to student and staff needs.

[14] The Complainant submitted various Board and Court decisions supporting their contention that the test the Board should use is "practical and efficient" and not the "necessary and integral part" test.

[15] The question then becomes: Is the subject property being used to achieve educational purposes in a practical and efficient manner? Not: Is the subject property necessary and integral in achieving educational purposes?

[16] Upon questioning the Complainant stated that the A&W in HUB Mall does not operate differently than any other A&W in the city, however, the A&W in HUB should be exempt

because it serves the student population. The Respondent asked if students were allowed to sit in the A&W and study. The Complainant responded that it was unlikely.

[17] The Complainant was not able to provide statistics of student customers vs. non student customers.

[18] The Complainant was questioned on the jewelry store located in the subject, and how it served student needs. The Complainant responded that it may be convenient for students to go there and purchase engagement rings. The jeweler helps the students save time and it is convenient for them. The same argument was made for the law office and other businesses located on the premises.

[19] The Complainant was asked about access to HUB Mall by non students or people not connected with the University. The premises are open to the public, as is SUB, and it is connected to a major LRT facility and transit centre. There are also private residences located in the vicinity of the University that have access to the subject. The tenancies are for profit and are there mainly to serve student needs despite the fact that surrounding residences access and use HUB Mall as well. There are no prohibitions on the use by non students.

[20] The Complainant was asked if the student Meal Plan Cards could be used in HUB Mall. They cannot be used and the Complainant was unsure as to what the reasons for that were.

[21] In summary, the Complainant argued that the non acceptance of the Meal Plan Card (and the GST discount) was irrelevant. Businesses in HUB Mall do offer discounts to students and that was not counted as a factor for exemption by the Respondent.

[22] The fact that there is a transit centre attached to the subject is also not considered by the Complainant to be relevant. 45,000 students and staff come and go every day and transit is used by many. Exemption should not be based on whether or not students, staff or the general public are using transit.

[23] The businesses in HUB Mall are used mostly by students and staff. The legislation does not require the facility to be “used for” or “exclusively” or “primarily” for educational purposes. A broader interpretation of the legislation is needed as indicated by the *Aramark (University of Alberta v. Edmonton (City of), 2005 ABCA 147)* court decision.

[24] Therefore the Complainant requested exemption of the entire 10% of the Retail portion.

Position of the Respondent

[25] The Respondent presented written evidence (Exhibit R-1, 291 pages) and oral argument for the Board’s review and consideration.

[26] The Respondent did not have an issue with the subject being “held by” the Governors of the University of Alberta.

[27] The Respondent provided a detailed list of what is housed in HUB Mall (R-1, pages 15-42). The breakdown is as follows:

- i. Dorm Area 65.22%
- ii. Commercial Area 10.13%
- iii. U of A 25%

[28] An on-site inspection was conducted by the Respondent in July 2013 and a survey was compiled (R-1, pages 43-49). The tenants were asked to provide a breakdown of their customer base into students, staff and public.

[29] Aramark operates seven of the food service providers in HUB Mall (R-1, page 52). Aramark operates other food service providers across campus, however, it was submitted that the HUB Mall locations are the only ones that do not accept the Meal Plan Card .

[30] Meals purchased on the Meal Plan card are GST exempt.

[31] Information on the transit centre and ridership details were provided to the Board (R-1, pages 59-69). There are approximately 30,000 people coming and going daily and they all have access to the services available in HUB Mall.

[32] Photographs of HUB Mall were provided for the Board's review (R-1, pages 71-95).

[33] The Respondent provided a 2006 tax assessment agreement between the City of Edmonton and The Board of Governors of the University of Alberta. Upon questioning the Respondent stated that the purpose of including the agreement was to show that at one time there was an agreement as to assessment of the subject between the two parties and clarified that it was applicable to the 2005 and 2006 taxable assessments and no longer applied.

[34] The Respondent was questioned on the tenant survey. It was a verbal survey of all HUB commercial tenants, conducted by the assessor. Of all the commercial tenancies, three indicated that 20% of their customers were the general public and the remainder of the businesses indicated that approximately 90% of the customers were students and staff.

[35] The Respondent argued that HUB Mall offered no benefit to the students other than convenience, and ease of convenience should not be a factor for exemption.

[36] HUB Mall does not accept the Meal Plan Card, and this is the reason it differs from the Student Union Building (SUB), which is exempt and does accept the Meal Plan Card, which automatically discounts the GST.

[37] It was argued that none of the retailers on campus operate any differently than the retailers off campus such as the A&W or Subway restaurants. These retailers do not offer a subsidy to the students.

[38] The Respondent went through the case law provided by the Complainant and indicated that the facts were different than what was presented in the present case. The Court of Appeal decision in *Aramark* dealt with a no profit situation as the University was trying to keep prices down.

[39] The Respondent agreed that nourishment was important, however, that didn't mean any type of food was acceptable. The food should be healthy and fast food burgers and fries were not good options.

[40] "Convenience" is not sufficient to merit a connection to educational purposes, that is not the test. The test is set out in *Edmonton (City) v. Governors of the University of Alberta, 2013 ABQB 440, paragraph 35*. The test is: Is the property used for the purposes of "achieving educational purposes in a practical and efficient manner". The effect of the previous year's decision was, if it is convenient to the student then it should be exempt, which is not what the test is.

[41] The Respondent also submitted that there should be an analysis of the individual retailers to ascertain their connection to educational purposes. As a jeweler or law office does not assist the students in educational purposes, these businesses do not meet the test.

[42] The Respondent also argued that a distinction has to be drawn between "university purposes" and "educational purposes." The term "university purposes" is used in British Columbia (*University Act, R.S.B.C. 1996, c. 468, s. 54(1)*) and is broad, whereas in Alberta there is the more narrow approach of "educational purposes." The Respondent submitted that the previous year's Board did not understand the difference.

[43] The previous year's Board decision relied on the *Trustees of Centenary United Church and Regional Assessment Commissioner, Region No. 19 et al., 27 O.R. (2d) 790*. The Respondent argued that the Board did not consider the evidence in that case as it pertained to the caretaker's responsibilities. "The occupation by the caretaker was more than a simple convenience. It was necessary for the purposes of the church in that it provided significant benefit to the church and was materially conducive to the church's efficient operation." (R-1, page 268)

[44] The Respondent stated that last year's decision on the subject presented a challenge for this year's appeal; however, the Respondent indicated that last year's Board was unaware of the Meal Plan issue and did not know the specifics of the transit centre, which the Respondent believed would assist in supporting the assessment.

[45] The Respondent outlined four options available to the Board:

- i. Decide that HUB Mall is no different than any other mall in the city. The Meal Plan Card cannot be used and there is 10-15% non student and non staff traffic.
- ii. Segment out the food areas, and deem them exempt. The Respondent does not agree with this approach primarily because the Meal Plan Card cannot be used.
- iii. Exempt the areas that offer subsidies. The Respondent does not agree with this approach as the subsidies do not apply to all the students, only a segment of the students.
- iv. Agree with the Complainant and exempt all of the retail.

Decision

[46] The Board accepts the City of Edmonton recommendation of the exemption percentages for the Residence and Educational Use portions as follows:

65% University-College Residence-Exempt School-Taxable Municipal

25% University-Educational Use-100% Fully Exempt School and Municipal

[47] Furthermore, the Board finds that the whole of the 10% of Retail is “used in connection with educational purposes” and is therefore exempt.

Reasons for the Decision

[48] The Board considered all of the evidence and arguments presented.

[49] The Board did not make a finding on the “held by” issue as both parties agreed that the subject is “held by” the Governors of the University of Alberta, and the Board accepts this.

[50] The Board also finds that it does not need to concern itself with “university purposes” as that is not what the relevant legislation is concerned with.

[51] The Board accepts that the test to determine whether or not the subject is being used “in connection with education purposes” is the “practical and efficient manner” test. The Court of Appeal suggested that this is the test in the *Aramark* case and the Court of Queen’s Bench affirmed the test in its decision on the appeal of last year’s Board decision.

[52] The Board is left with the interpretation of the wording in section 362 of the MGA. What does “in connection with” mean?

[53] The Board notes that if the legislation meant for the wording to imply that the connection had to be more than convenience, the legislation could have used wording to the effect of “used for educational purposes” or “primarily for educational purposes”.

[54] For the purposes of this hearing the Board finds practical and efficient to be synonymous with convenience.

[55] The Board finds that there merely has to be a connection between the services provided in HUB Mall and the students and staff as they go about their business of achieving “educational purposes”.

[56] The Board finds that to have ease of access to food services, a jewelers or even a law office, is a matter of practicality and efficiency. The time that a student can save to spend on studying, attending classes, preparing projects is invaluable. If the services allow a student to save time so that they can focus on their studies, then there is a connection between those services and educational purposes.

[57] The Board found the Respondent's tenant survey to be useful to ascertain the makeup of the customer/client base for the businesses. The Board notes that the survey results were based on guess work on behalf of the tenant, but accepts that educated guesses were made. The Board also acknowledges that not all the tenants were available to provide information for the survey. The survey indicates that approximately 85-90% of the services are used by students and staff. The Respondent acknowledges this as well and the Board is willing to accept the range.

[58] The Respondent also provided transit information indicating that transit centre is one of the busiest, and services more than just the University population. The Board accepts this information.

[59] The Board finds that regardless of the access the public has to HUB Mall, a large majority of people accessing the services in HUB Mall are students and staff. The Board concludes that the businesses of HUB mall would not be sustainable without the patronage of the students and staff and are not reliant on the public for economic sustainability.

[60] The Board finds that for the businesses to remain operational in HUB Mall, they must have value to the students and staff. That value may well be the convenience that allows them to navigate university life with some practicality and efficiency. They can access bank machines, get a watch repaired, choose a gift, pick up school supplies and eat between classes without having to leave campus and carve out extra time in their busy day to take care of these tasks.

[61] Knowing that approximately 85-90% of the services are used by students and staff, the businesses in HUB Mall would have to take that into consideration before taking up occupancy. Can they offer practical, efficient or convenient services that would attract their target clientele?

[62] The Board also considered the fact that HUB Mall vendors do not accept the Meal Plan Card. The Respondent seemed to focus on this point and stated upon questioning from the Board that the reason SUB is exempt is because it accepts the Meal Plan Card. The Board notes that SUB is also accessible by the public.

[63] The Board notes that the Meal Plan is geared towards the students who live on campus (R-1, pages 54-57). The Board also notes that students who live in Residence only comprise a segment of the student population. The Respondent argued that they would not exempt some of the businesses in HUB Mall because subsidies are only offered to a segment of the students. The Board finds it difficult to reconcile the two situations.

[64] The Board also notes that the GST discount is not a subsidy or discount instituted by the University, but rather a function of how Revenue Canada defines "on campus meal plan" (R-1, page 55).

[65] The Board does not find the lack of the Meal Plan in HUB Mall to be a significant factor in ascertaining exemption.

[66] The Board finds that the businesses in HUB Mall provide a value to the students and staff that are there "in connection with educational purposes". That value can be translated into convenience, practicality and efficiency.

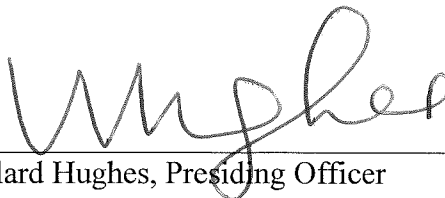
[67] For this reason the Board finds that 100% of the commercial level space should be exempt.

Dissenting Opinion

[68] There was no dissenting opinion.

Heard commencing September 9, 2013.

Dated this 9th day of October, 2013, at the City of Edmonton, Alberta.



Willard Hughes, Presiding Officer

Appearances:

Chris Buchanan

Kerry Reimer

for the Complainant

Cam Ashmore

Moreen Skarsen

for the Respondent

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.