

**CALGARY  
COMPOSITE ASSESSMENT REVIEW BOARD  
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:

***BIM CBE Inc., as represented by Altus Group Limited, COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***S. Barry, PRESIDING OFFICER***

***D. Julien, MEMBER***

***J. Rankin, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201171642 and 201694064</b>
<b>LOCATION ADDRESS:</b>	<b>1221 8 St. SW</b>
<b>HEARING NUMBER:</b>	<b>68122 and 68140</b>
<b>ASSESSMENT:</b>	<b>\$23,330,000 and \$62,090,000</b>

This complaint was heard on the 13th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *G. Kerslake, Altus Group Limited*
- *R. Brazzell, Altus Group Limited*
- *F. Coppinger, Calgary Board of Education (Witness)*

Appeared on behalf of the Respondent:

- *L. Wong, City of Calgary*

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

[1] There were no preliminary or jurisdictional matters raised at the hearing. The Complaints with respect to the two roll numbers were heard together as they related to the same property.

**Property Description:**

[2] The subject property is known as the Calgary Board of Education building, constructed in 2010 and located at 1221 8 St. SW in the Beltline District. Its land use district is Direct Control. The property consists of a 10 storey building and an underground parkade consisting of between 335 and 340 stalls.

**Issues:**

[3] Are 296 underground parking stalls exempt from taxation pursuant to s. 362(1)(c) of the *Municipal Government Act* (the Act)?

[4] There was no issue with the valuation method or with the values assigned to the various components in calculating the assessment. There was no dispute with respect to the total assessment of the two Roll numbers combined; only with the allocation of the assessment between them.

**Complainant's Requested Value:**

- [5] With respect to Roll No. 201171642: \$5,450,000  
With respect to Roll No. 201694064: \$79,960,000

**Board's Decision in Respect of Each Matter or Issue:**

[6] There are two roll numbers for the property. Roll No. 201171642 (hereafter referred to as Roll 642) carries an amended assessment of \$23,330,000 and reflects the taxable portion of the property; specifically two retail premises and the entire underground parkade. Roll No. 201694064 (hereinafter referred to as Roll 064) carries an amended assessment of

\$62,090,000 and reflects the tax-exempt portion of the property; specifically, the office space.

[7] Both parties referenced s. 362(1) of the Act, the relevant portions of which are cited here with emphasis added by the writer:

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

(c) property, other than a student dormitory, used in connection with school purposes and held by

(i) the board of trustees of a school district, school division or regional division

[8] It was the contention of the Complainant that 296 underground parking stalls are held by the primary tenant of the building, the Calgary Board of Education (CBE), in connection with school purposes and the value assigned to them should be removed from Roll 642 (taxable) and added to Roll 064 (exempt from taxation).

[9] The Respondent's position is twofold: first, that the Complaint was made on behalf of the owner of the building (BIM CBE, referred to hereinafter as Bentall) and that the owner is not an exempt entity - only the tenant, CBE, is an exempt entity; secondly, that the disputed parking stalls are held by the owner of the property and not the exempt tenant. The Respondent agreed that the office space occupied by the CBE is exempt from taxation.

[10] A history of the property provided by the Complainant and abbreviated here, outlined that the lands lying between 8<sup>th</sup> St. and 9<sup>th</sup> St. SW and 12<sup>th</sup> Av and 13<sup>th</sup> Av SW, had been held by the CBE since 1907. The CBE entered into a partnership with Bentall Real Estate Services LP (Bentall) with the effect that the land owned by the CBE was subdivided into three parcels with the most westerly being transferred to the City of Calgary for park purposes; the centre parcel (Safran) being retained by the CBE; the most easterly parcel being transferred to Bentall (in this instance, BIM CBE Inc.). Among other considerations, Bentall was to construct an office building and parkade for the CBE and enter into a long-term lease with the CBE. The lease had an initial term of 20 years and was executed in 2006. It was provided to this Board, in its entirety, within Complainant's disclosure item C2. The lease is for both the office space and the parking stalls and did not include the retail space.

[11] Of particular relevance in the lease were the provisions related to parking. S. 1.1 of the lease defines "Parking Facilities" as being "the portion of an integrated underground parking facility . . . which . . . physically underlies the Development. . . shall include three hundred (300) parking stalls, more or less." The parkade itself is a three storey structure located entirely beneath the office building but accessed through the Safran parcel owned by the CBE. At s. 3.9, the lease references the "mutual access easement agreement" that allows entry through the Safran parcel to the underground parkade and further references parking rights that are articulated in Schedule "E".

[12] Schedule "E" of the lease was provided to this Board within the lease document. S.6 of this Schedule grants the CBE "the licence to park . . . the number of which shall be the Tenant's Proportionate Share of the aggregate number of parking stalls . . . not required to be maintained for public parking purposes pursuant to any development agreement ...". Schedule "E" establishes the initial rent for parking stalls at \$125 per month and provides for a minimum of 200 stalls to be licenced to the tenant. It was noted that Impark manages the parking facilities

for Bentall. The Complainant included in C1 a copy of an invoice from Impark to the CBE, dated March 13, 2012 for 296 parking stalls at \$125 each for the month of April.

[13] Mr. Frank Coppinger, Superintendent, Facilities and Environmental Services for the Calgary Board of Education, was called as a witness on behalf of the Complainant to attest to certain facts. It was Mr. Coppinger's evidence that the CBE has roughly 600 employees working in the office space and has complete control of levels P2 and P3 of the underground parkade and 68 parking stalls on level P1. Mr. Coppinger further stated that only CBE employees are able to enter through a second gate at the entrance to P 2 and that any public parking is limited to 39 (or 44 stalls) and is allowed only on P 1 which is also used by the CBE for its staff, trustees and car pool parking. The witness further attested that the control point at the entry to the parkade is closed to the public, and signed as 'FULL', when all the allocated public parking has been taken up. The main control point is not re-opened to the public until a stall from the public allocation has been vacated.

[14] It should be noted that there was a discrepancy of 5 parking stalls. The CBE understood there to be a total of 335 and the parkade signage, as evidenced by the pictures in the R1 submission, seemed to support that. The City assessed 340 stalls in the parkade based on an email memorandum from Bentall to the Respondent. The Board determined that it was not necessary to decide the exact number for the purpose of this Complaint which did not contest the number of stalls assessed; only the allocation of the 296 CBE stalls to the taxable roll.

[15] The Complainant provided extensive legal and legislative references, including previous CARB decisions. These included CARB 2894/2011-P which dealt with the 2011 amended assessment complaint on the subject property and which referenced the Black's Law Dictionary definition of "Hold" which states, in part:

1. To possess in virtue of a lawful title;
2. To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent or performing a service.

[16] Finally, the Complainant spoke to equity and noted some six properties where all or most of the parking associated with exempt office space was also exempted from taxation by the City of Calgary. This argument was supported with relevant and reliable evidence from assessment records. These properties included those owned or occupied by the Red Cross, the Sheldon Chumir Health Centre, the Catholic School Board Head Office and Parkade and the Kahnoff Foundation as well as the former head office of the Calgary School Board.

[17] The Respondent's position was first, that the owner is a private corporation and therefore not eligible to be an exempt entity. Despite that, his reading of the lease led him to believe that the owner was entitled to an exemption of the office space but that, because of the degree of control he exercised over the parkade, that entitlement did not extend to the disputed parking stalls. He noted that the lease included parking facilities under the definition of Common Facilities and that these were "subject to the exclusive control and management of the Landlord". He further noted that the lease, and in particular Schedule E, was silent on which specific stalls were allocated to the CBE.

[18] The Respondent said that he had inspected the property and, while there was a barrier

to restrict access to levels P2 and P3 of the parkade, there was clearly public access to P1 and that the majority, in fact the first 100 of the stalls on that first level, were not marked as reserved. He also noted that the parking lot was signed on the outside as public parking. These factors indicated to him that the majority of P1 was available for public parking and therefore not eligible for exemption under the Act. He had no knowledge of the entry restrictions at the first control gate that would limit the number of public parking stalls available and concluded that the parkade was not being used for educational purposes. Beyond contacting Impark to determine if public parking was available in this parkade, the Respondent did not contact either the owner or the tenant for clarification on the operations of the parkade.

[19] The Respondent's response to the Complainant's equity argument was that in each case, except Kahnoff where there were multiple tenancies, the occupant of the premises was the actual owner and this distinguished these exemptions from the subject.

[20] The Board allowed the Complaint as requested for the following reasons:

[21] Pursuant to s. 460 of the Act, a complaint may be made by an assessed person or a taxpayer and the complaint may be about whether or not the property or business is exempt from taxation. Bentall is the owner of the building; it is the assessed person as well as a taxpayer and is entitled to make a complaint respecting the tax exempt status of its property. There is no other reasonable interpretation. The Respondent did not direct the Board to anything in the Act that restricted the right of complaint to the tenant.

[22] Further, the Board did not have to determine whether either Bentall or its tenants are exempt and are then somehow precluded from complaining about an assessment. S. 362(1)(c) of the Act, clearly says that it is the property, not the owner or the tenant, that is exempt from taxation if certain conditions are met. Those conditions, for the purpose of this complaint, are that the property must be **used** in connection with **school purposes** and **held** by a **board of trustees of a school district**. The Board, then, decided on facts relevant to the complaint and determined if the conditions surrounding the property met the stated criteria.

[23] The Board found that 296 of the underground parking stalls met the above-noted conditions. The lease clearly entitled the CBE to the use of some number of parking stalls and contemplated a charge for them. Schedule "E" of the lease set an initial rent and stated that Bentall must provide the CBE with a minimum of 200 stalls. Further, Schedule E contemplated some number of public parking stalls would be required as a condition of approval by City although at the time of execution of the lease that number was not known, nor had the final number of stalls to be constructed been determined. The Impark invoice to the CBE for 296 stalls also supported this conclusion.

[24] The Board found no reason to question the evidence of the CBE representative as to the fact that all 296 stalls are used exclusively by employees or trustees of the CBE and were therefore used for school purposes. Nor did the Board find reason to question the evidence that controls were in place to limit the number of stalls to be used for public parking. The Respondent, by his own admission, did not question either the CBE or Bentall on this matter.

[25] The Respondent's contention that the lease assigned the landlord exclusive control and management of common property or, indeed, the parkade does not speak to the use and occupancy of the stalls. It speaks to the right of the landlord to ensure the safety and integrity of the entire premises. It is a standard feature of commercial leases. The Common Facilities

provisions have to be read in the context of the entirety of the lease. These provisions do not impinge on the use of the parking stalls by the tenant under ordinary conditions.

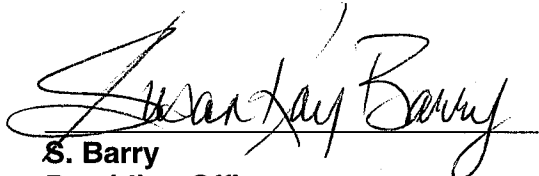
[26] It was clear to the Board that the parking stalls, like the office space, are tied to the CBE through the lease. There was nothing, other than a dispute over the public/private nature of some of the P1 stalls, to distinguish the office space from the parking space in this regard and, accordingly, the Board found that 296 of the underground parking stalls satisfied the conditions of s. 362(1)(c) of the Act. The 296 stalls are held by the school district and used for school purposes by virtue of their being occupied by school board employees. The assessments are amended.

**Board's Decision:**

The 2012 assessment for Roll Number 201171642 is reduced to \$5,450,000

The 2012 assessment for Roll Number 201694064 is increased to \$79,960,000

DATED AT THE CITY OF CALGARY THIS 30 DAY OF August 2012.



S. Barry  
Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant's Disclosure
2. C2	C1 Appendix
3. C3	Complainant's Legal Argument
4. C4	Complainant's Legal Authorities
5. C5	Complainant's Rebuttal
2. R1	Respondent's 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.*

## For MGB Administrative Use Only

Decision No.:		Roll No.:		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Office	High-Rise	Exemption	Education Use and Held