CALGARY
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:

Alberta Health Services (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
K. Coolidge, MEMBER
J. Kerrison, MEMBER

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

ROLL NUMBER:	**415016104**
LOCATION ADDRESS:	**30 Country Village CV NE**
HEARING NUMBER:	**67800**
ASSESSMENT:	**$4,540,000**

This complaint was heard on 22nd day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board 3.

Appeared on behalf of the Complainant:

- *Mr. R. Brazell - Altus Group Limited – (appearing as a Tax Consultant)*
- *Mr. A. Izard - Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. J. Young - Assessor – City of Calgary*
- *Mr. M. Jankovic - Assessor - City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is a 250,915 square foot (SF) 5.76 acre (Ac.) vacant land parcel owned in Title by Alberta Health Services. It is located at the NE intersection of Country Village CV NE and Country Village WY NE in Market Zone MR6. The site is zoned DC (pre 1P2007) in the City's Land Use Bylaw which allows certain restricted "Multi-Dwelling" uses, but not single-detached; duplex; or semi-detached dwellings under the "RM-4/75 Residential Medium Density Multi-Dwelling District" of Bylaw 2P80. The Bylaw also permits as a Discretionary use, "a sustainable health care facility and related accessory uses." The subject is assessed as "Land Only" at approximately $800,000 per Ac. for a total assessment of $4,540,000.

Issue:

[4] Does the subject qualify for an exemption from taxation under section 362(1)(g.1) of the Municipal Government Act (MGA)?

Complainant's Requested Value:

[5] The Complainant requests that the property be exempted from taxation.

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

Complainant's Position

[6] The Complainant argued that Section 362(1)(g.1) of the Municipal Government Act (MGA) (The Act) provides an exemption from taxation for property such as the subject, which is owned in Title by Alberta Health Services (AHS). The Complainant argued that by virtue of ownership of the property, AHS has "care and control" of the site, and hence it is "used in connection with health region purposes" as contemplated by Section 362(1)(g.1) of the MGA. The Complainant provided a current copy (dated September 10, 2012) of the Land Title Certificate for the site, and confirmed and clarified that the site is wholly-owned by Alberta Health Services.

[7] Section 362(1)(g.1) of the MGA states as follows:

> **"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;"

[8] The Complainant clarified that the Respondent considers that because the land is vacant, and no health region services or related activities are currently physically being actively conducted or carried out on the site, (i.e. it is "not being used") then it does not qualify for exemption as contemplated by the Act. The Complainant argued that this position is false logic because AHS is not in the business of land banking, and currently maintains an active planning program to build an extensive health services facility on the property, once funding for it is announced by the government.

[9] The Complainant argued that the AHS purchase of the site in 2002 was part of its long-range planning strategy to develop "urgent health care" facilities and programs for the northeast region of Calgary. AHS must plan ahead in anticipation of the need for such facilities – "to operate in a helpful and efficient manner". He argued that the City's interpretation of the legislation is narrow, and could not possibly be what was intended by the Legislature when the Act was passed.

[10] The Complainant described the proposed facility to be erected on the subject as a "Calgary North Urgent Care" complex. It is intended to be a "carbon copy" of both the "South Calgary Urgent Care facility" which sits adjacent to the Fluor Engineering building in Midnapore, and, the Sheldon Chumir Centre adjacent to downtown Calgary, both of which provide 24 hour urgent health care. He clarified that the subject site is intended to provide health-related services such as "Calgary Lab Services"; "Diagnostic Imaging"; "Dialysis"; and associated medical services and offices as outlined in the Land Use Bylaw.

[11] The Complainant clarified that because the site's zoning allows for certain multi-residential uses, the Respondent assumes that a residential use may be constructed on the subject, and not an urgent care facility. However, he clarified that AHS is in the business of health care, and not multi-residential (apartment) development. He argued that the zoning is "very clear, and (the site is) intended to be developed and used as 'a sustainable health care facility.'" Moreover, he noted, since AHS owns the land outright, they control what can and cannot be developed on it. He also clarified that a large "seniors care" facility currently exists adjacent to the subject, and therefore the urgent care facility is also a highly complementary use to that facility.

[12] The Complainant clarified that it is not the "nature of the business" that AHS simply buys a parcel of land, and proceeds immediately thereafter to construct health care facilities on it. That is not the nature of government construction projects, nor the nature of health care facility development. On the contrary, AHS conducts long-term health care planning, identifying strategic health care sites, acquiring them, applying for government funding, preparing detailed construction plans, and applying for proper permits to build. This takes time, and indeed, AHS must follow lengthy and well-established government procedures just to buy the land.

[13] The Complainant argued that it would be foolhardy for AHS to reverse this process and attempt to acquire a site as a final step in the process, since later acquisition of a desired site may be thwarted for one reason or another, after detailed and costly plans had been prepared for it. This would be a grossly inefficient use and/or potential waste of taxpayer funds he suggested. He argued that AHS must have land in suitable locations "to do its job", and in acquiring the subject, it is prudently working towards fulfilling its health-focused mandate to the benefit of taxpayers.

[14] The Complainant argued that the City's position, which suggests that if an exemption for this site is granted, then "the rest of the taxpaying public is forced to pay the foregone provincial and municipal taxes", is "illogical and misrepresenting both the situation, and further, the intention of the legislation, as the legislation could not have been intended in this manner."

[15] The Complainant argued that in his view, AHS is not obliged to apply for an exemption, but rather the obligation is on the City to demonstrate that the subject is not exempt. The City must demonstrate to the Board and to the Complainant, that the subject is used for a "non-health care purpose", "something inconsistent with health care", but they have not.

[16] The Complainant referenced relevant sections of several Appeal Board, and, Court Decisions which he argued supported his position and that of his client, Alberta Health Services. The Complainant referenced the following;

1. *Board Order MGB 019/12* which dealt with exemptions for parking spaces for AHS under Section 362(1)(g.1) of the MGA.

2. *Board Order MGB 015/04* which dealt with an exemption related to the closure of the Village of Empress hospital.

3. *Alberta Court of Appeal – University of Alberta v. Edmonton (City of), 2005 ABCA 147* which dealt with certain principles of exemption as outlined under Section 362 of the MGA and which, he argued, are applicable to the subject. In particular the Complainant found that paragraphs [14], [16], and [17] addressing the principle "Used in Connection with...." are especially relevant to the issue before the Board today.

4. *Alberta Queen's Bench – 2008 Carswell Alta 184, 2008 ABQB 110, [2008] A.W.L.D 1127 [2008] A.W.L.D. 1205,42 M.P.L.R (4th) 84,444 A.R. 390* which dealt with an Edmonton church exemption, and certain principles of exemption as outlined under Section 362 of the MGA and which he argued are applicable to the subject.

5. *Calgary Assessment Review Board – CARB 2569/2011-P* regarding an exemption for AHS parking spaces.

6. *Calgary Assessment Review Board – CARB 1510/2012-P* regarding an exemption for AHS parking spaces.

7. *British Columbia (Assessor of Area No. 1 – Capital) v. University of Victoria [2010] B.C.J. No. 164 2010 BCSC 133 Docket: S078717* which dealt in part with clarification of the term "used for university purposes".

[17] The Complainant summarized and argued that the subject has exempt status under Section 362(1)(g.1) of the MGA.

Respondent's Position

[18] The Respondent confirmed that the City accepts that the subject parcel is in fact owned in Title by Alberta Health Services. He argued that the subject is however, a vacant land parcel with "nothing on it" and therefore the City considers that it is not "being used in connection with health region purposes" pursuant to Section 362(1)(g.1) of the MGA. He argued that simply "holding the land", in his view, is not a "use" as contemplated by the Act. He noted that the Act does not appear to define the term "use" but the City takes the view that there must be some visible and ongoing health-related activity (i.e "dirt moving") on the land for it to qualify as being "used" and hence be exempt.

[19] The Respondent noted that pursuant to the permitted and discretionary uses in the City's Land Use Bylaw which governs development on the site, there is provision for residential development on the property. He provided an excerpt of "Amendment # LOC2001-0029 to Bylaw #39Z2002 – being an amendment to the City's Land Use Bylaw. The Bylaw states in part:

> "1. Land Use
>
> The Permitted and Discretionary Uses of the RM-4/75 Residential Medium Density Multi-Dwelling District of Bylaw 2P80 shall be the Permitted and Discretionary Uses respectively excluding single-detached dwellings, duplex dwellings and semi-detached dwellings and with the additional Discretionary Use of a sustainable health care facility and related accessory uses.
>
> For the purposes of this Bylaw, 'a sustainable health care facility' means a development containing the following components: medical/clinics, offices, (medical), 24 hour urgent care (no overnight stay), laboratory services, and diagnostic imaging services."

[20] The Respondent posed therefore that residential development is viewed as a potential land use, and, since no plans have been presented to the City from AHS to develop the site, the City considers the site to be non-exempt and taxable. He also argued that because AHS have owned the land since 2002, and nothing has been built on the site to date, "AHS is merely holding the site" (i.e. land banking).

[21] The Respondent further concluded that because there is "no activity or actions occurring onsite at all", AHS is "asking the City to subsidize" its activities by requesting an exemption. He questioned "what use of a vacant land parcel helps the City?" He offered that "when there is a hospital built on the site, then it benefits Calgarians." He noted that no building or other permits have been applied for or issued for the site.

[22] The Respondent argued that if the City and the Board were to alter the City's current interpretation and application of Section 362(1)(g.1) of the MGA to allow "an intention to be used" philosophy, then this would have the effect of providing incentive for other vacant land parcels to request exemptions.

[23] In response to questions, the Respondent concurred that under a scenario where AHS were to use the parcel for AHS parking purposes – however limited or grand for example, then in his and the City's view, the parcel would be considered to be "used" by AHS and therefore in compliance with Section 362(1)(g.1) of the MGA. It would then qualify for an exemption. However, the Respondent clarified that as of the current assessment cycle, this is not and was not the case.

[24] The Respondent briefly referenced the following Ontario Court Decision:

1. *"Chrysler Canada Inc. v. Municipal Property Assessment Corp., 2012 ONSC 2129 Divisional Court File No.: DC-10-392-ML Date 20120813"* which dealt with the following Issue related to the Province of Ontario "*Assessment Act, R.S.O. 1990, c. A 31 as amended*" :

   > "*Did the Board err in law in its determination that for the purposes of s. 44(3)(b) of the Act, "vicinity" may not exceed the boundaries of the municipality in which the properties under appeal are located.*"

[25] The Respondent argued that the foregoing Ontario Court case assists in supporting the City's interpretation of Section 362(1)(g.1) of the Alberta MGA, and bolsters the Respondent's broader position regarding this appeal.

[26] The Respondent requested that an exemption not be granted for the subject, and the assessment be confirmed at $4,540,000.

Board Findings

[27] The Board finds that the subject is owned outright "in Title" by Alberta Health Services who have care and control of the property at issue, and which is properly zoned in the City's Land Use Bylaw to facilitate the development of health care facilities, services, and related activities.

[28] The Board finds that Alberta Health Services is charged with, among other things, providing "sustainable health care" facilities and services, and is, and has been, actively planning since 2002 and earlier, to fulfil part of its mandate of providing "Urgent Care Facilities" on the subject parcel. The Board therefore accepts that active and overt development (i.e. dirt moving) will occur on the subject when funding for the project is approved by the government.

[29] The Board finds that the Respondent did not dispute the Complainant's assertions that development of any kind, private or public sector development, including Alberta Health Services, typically takes an extended period of time to complete projects, from inception, to land acquisition, to final construction. Nor did the Respondent dispute that the acquisition of a strategically-located parcel of land, is critical to the planning and development process for projects proposed by private as well as public sector bodies.

[30] The Board fails to see the relevance or logic of the Respondent's assertions, that – and using the Respondent's phraseology, "the movement of earth", or parking of even one AHS vehicle on the subject would somehow confirm the subject being "used in connection with" AHS activities, the results of which then qualifies the subject for exemption under Section 362(1)(g.1) of the MGA. This leads the Board to conclude that the Respondent's interpretation of Section 362(1)(g.1) is unreasonably narrow, bordering on an absurdity.

[31] The Board finds that Section 362(1)(g.1) of the MGA is not offended by the Respondent's observations of a lack of "dirt moving", or other overt activity taking place, or caused to take place on the site, by AHS. The Board takes its guidance in this regard from the Alberta Court Of Appeal:

> *Alberta Court of Appeal – University of Alberta v. Edmonton (City of), 2005 ABCA 147,* which states at [16] and [17]:
>
> *"[16] In our view, the 'necessary and integral part' test is too restrictive and does not accord with the plain wording of the statute. Section 362(1)(d) requires a property to be 'used in connection with educational purposes.' The requirement that the service be a necessary and integral part of the provision of education' would only capture a subset of properties used in connection with educational purposes. For example, an essay editing service or a library photocopy service might not be a necessary and integral part of the provision of education, yet might well be connected with educational purposes*
>
> *[17] No Alberta precedent establishes a definitive test for 'used in connection with' in the context of s. 362(1)(d). Perhaps a helpful consideration to apply is whether the properties are used 'for the purpose of achieving [educational purposes] in a practical and efficient manner.' See* ***Re Trustees of Centenary United Church and Regional Assessment Commissioner, Region No. 19)*** *(1979), 27 O.R. (2d) 790) at 798 (Co. Ct.)."*

[32] The Board finds the Respondent's assertions that taxpayers will be forced to pay foregone provincial and municipal taxes if the subject is exempted, to be without foundation.

[33] The Board finds that the Respondent failed to convince the Board that the subject is not being used in connection with health region purposes pursuant to Section 362(1)(g.1) of the MGA.

Board's Decision:

[34] (a) The subject property is exempt pursuant to Section 362(1)(g.1) of the MGA, and,

(b) The assessment is confirmed at $4,540,000.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF November 2012.

K. D. Kelly
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure – Rebuttal
3. R-1	Respondent 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.

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Institutional	Health Care	Exemption under Section 362(1)(g.1) of the MGA	lack of overt activity onsite