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:

Royop Development Corporation (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER
P. McKenna, BOARD MEMBER
Y. Nesry, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	**415053206**
LOCATION ADDRESS:	**11622 Harvest Hills Bv NE**
FILE NUMBER:	**72334**
ASSESSMENT:	**$1,600,000**

This complaint was heard on the 10th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- K. Fong, Altus Group Limited
- A. Izard, Altus Group Limited

Appeared on behalf of the Respondent:

- *M. Jankovic, City of Calgary*
- *S. Cook, City of Calgary*

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

[1] There were no procedural or jurisdictional matters raised at the hearing.

Property Description:

[2] The subject property is an 8.0 acre parcel, owned by the City of Calgary, located in the community of Country Hills Village in the north-east quadrant of the City adjacent to the Country Hills Shopping Centre. Its land use district is Special Purpose – City and Regional Infrastructure and the property use is listed as Institutional. It is assessed as 100 per cent non-residential using the sales comparison approach. The site, commonly known as Northpointe – Park 'n' Ride, is used for both transit Park 'n' Ride and for parking associated with the adjacent commercial development.

Issues:

[3] Should the taxation status be changed from Taxable to Exempt?

Complainant's Requested Value:

[4] The Complainant did not contest the assessed value of $1,600,000.

Board's Decision:

[5] The 2013 assessment is confirmed at $1,600,000 and the property retains its taxable status.

Position of the Parties

Complainant's Position:

[6] The Complainant stated that the parcel was originally dedicated to the City at the time of the development of the adjacent shopping centre and that it was required by the City for transit-related purposes, such as a bus turnaround, as well as Park 'n' Ride parking. However, the developer also had to satisfy the overflow parking needs of one his tenants, Empire Theatre. Accordingly, he requested, by way of a lease on the parcel, the right to use the property for that purpose. He constructed the improvements on the parcel and said that he is required to pay the annual operating costs which amounted to $93,875 in 2012, net of property taxes, which he is also required to pay. His annual rent to the City is $85,800.

[7] It was the Complainant's contention that the parcel is used primarily as a general public benefit in that at least 75 per cent of the time its use is associated with the Park 'n' Ride facility. In this latter regard, the Complainant referenced "Property Tax Exemption in Alberta – a guide", produced by Alberta Municipal Affairs in 2005. That guide references various types of charitable or benevolent, community or non-profit organizations and the various levels of unrestricted use of the property that are required before it can be considered for exemption. He also referenced s.362(1)(n)(iii) to the extent that the parcel is held by a municipality and is used for the benefit of the general public. The Complainant agreed that neither the developer nor the successor-owner, H&R, is a charitable, benevolent, community or non-profit organization. He further agreed that both parties to the lease have unrestricted access to the property for parking purposes. He did, however, contend that using these guidelines and given the general public benefit conferred on the transit-riding public, an exemption from taxation is warranted.

[8] Additionally, the Complainant argued, and this was the primary support for his request, that the property meets the test of s.362(1)(b)(ii) of the Act which, paraphrased, states that a property held by a municipality and that is operated as a public benefit, is exempt from taxation if the annual operating costs of that property exceed the revenue derived from it. In this respect, his contention is that the municipality's revenue is $85,800 in rent and the operating expenses, net of taxes, are $93,875. There are 900 unreserved or free parking stalls on the parcel. Neither party generates income from the use of specific parking stalls.

[9] The Complainant also documented some 30 other Park 'n' Ride lots and noted that only the subject is taxable; all the others are deemed exempt from taxation by the City.

Respondent's Position:

[10] The Respondent questioned whether the assessed person was correct (i.e., Royop) when it is the City that is the owner and that another entity, H & R, had signed the agent authorization form. It created the situation where the City has established the assessment but is appearing to challenge that assessment through a party not on the record.

[11] The Respondent introduced the full lease for the property and noted that the tenant, Royop, is only responsible for 50 per cent of the operating costs and that the City pays the other 50 per cent. He argued that, with respect to s.362(1)(b)(ii) of the Act, it is only the revenue and expenses that accrue to the City that should be considered. The Respondent noted that even if the parcel were to be declared exempt, the lease requires the tenant to pay an annual amount equal to the taxes that would have been levied.

[12] In response to the issue of other non-taxable park 'n' ride sites, the Respondent stated that none of them are covered by leases to other parties.

Board's Findings and Reasons for Decision:

[13] The Complainant argued that the subject property is operated as a public benefit. For reasons discussed below, the Board is of the view that it is not operated solely as a public benefit but also for commercial purposes. Even if it were determined that the operation was solely for a public benefit, that is not the complete test of its eligibility for exemption; other elements must be considered.

[14] The Board noted that the Complainant was not able to document his contention that the parking lot is used by the City, largely as a public benefit, 75 per cent or 60 per cent or whatever percentage of the time. In any event, that argument is moot given the terms of the lease and careful consideration of the Act.

[15] The Board carefully reviewed the 1999 lease provided by the City in its submission. As to the first issue raised by the City, the lease specifically gives the tenant the right to appeal assessments or apply for a reduction in taxes. The question of who should be identified as the assessed person should be resolved between the parties and is not germane to the issue at hand.

[16] The initial term is 20 years and the base rental rate, exclusive of taxes, is $85,800. Rental rates increase after the initial term for potential 5 year renewal periods. Further, the lease contemplates only three specific uses: "parking for the patrons of the Development; a transit turnaround for Calgary transit; and parking for patrons of Calgary Transit Park 'n' Ride". (s.5.01). There are to be no "restrictions on either party limiting the time or the duration of access and use of the Premises". S.8.02 of the lease states that "the Operating Costs shall be shared and paid equally between the Tenant and the Landlord". Operating Costs are defined in the lease to exclude "Taxes and the Tenant's administration costs".

[17] It is clear that the developer/tenant had a business reason for entering into this lease; it is to his benefit and serves an unrestricted commercial purpose. The fact that the City also enjoys an unrestricted public benefit access to the parcel does not over-ride or supplant the fact of commercial usage.

[18] With respect to the interpretation of s.362(1)(b)(ii) of the Act, the applicability of an exemption depends on revenues and expenses attached to the property. Logically, the revenue and expenses can be either those of the municipality or those of the municipality and others. The Complainant argues that only the revenue accruing to the Municipality must be considered while the operating costs of both the municipality and others would form part of the determination required by the Statute. The Board noted that the Complainant did not provide any evidence of the revenue accruing to him from his own tenant.

[19] There is no disagreement between the parties as to the annual rent being as stated: $85,800. Neither did the Respondent challenge the Complainant's spread sheet of expenses as contained in his submission. The Respondent did take the position, however, that the financial considerations to be taken into account in interpreting s.362(1)(b)(ii) of the Act are the revenue and expenses that accrue to the City and that any revenue and expenses received and borne solely by the tenant are irrelevant. The Board concurs. The revenue received by the City is $85,800 and the operating costs for which it is responsible are approximately $46,937.

[20] It is our view that s.362(1)(b)(ii) of the Act is intended to operate to the benefit of the City inasmuch as when it holds property that is used for a public benefit, which the park 'n' ride parking is deemed to be, but also derives revenue from that property either through its own operations or the operations of a third party, then the City will not lose the opportunity to also receive tax revenue, provided that the annual revenue exceeds annual operating costs.

[21] The Complainant has not proven its allegations that the revenue is less than the operating costs and therefore the conditions precedent to deeming the property to be exempt under s.362(1)(b)(ii) of the Act have not been met and the 2013 assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 25th DAY OF June 2013.

Susan Barry

Susan Barry
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	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.

For Administrative Purposes Only

Municipality	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary	415053206	Institutional		Exempt	