EDMONTON
Assessment Review Board

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NOTICE OF DECISION No. 0098 89/12

Altus Group Limited
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (CARB) from a hearing held on July 5, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9953744	8303 - 112 STREET NW	Plan: 8120177 Block: 159 Lot: 36	$27,055,000	Annual New	2012

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.

cc: GOVERNORS OF THE UNIVERSITY OF ALBERTA

Edmonton Composite Assessment Review Board

Citation: Altus Group Limited v The City of Edmonton, ECARB 2012-001425

Assessment Roll Number:	9953744
Municipal Address:	8303 112 STREET NW
Assessment Year:	2012
Assessment Type:	Annual New

Between:

Altus Group Limited

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Dean Sanduga, Presiding Officer
Darryl Menzak, Board Member
Judy Shewchuk, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board.

[2] At the request of the Respondent the witnesses were affirmed.

Background

[3] The subject property is a multi-storey office building, constructed in 1991 and known as Terrace Building, located near the University of Alberta in the Garneau subdivision of the City of Edmonton. The building has a gross building area of 98,132 square feet and a leasable area of 89,254.5 square feet.

Issue(s)

[4] What portion of the subject property qualifies for tax exemption?

[5] Is the portion of the subject property in question "used in connection with educational purposes"?

[6] Is the portion of the subject property in question "held by the Board of Governors of a University"?

Legislation

[7] The Municipal Government Act reads:

***Municipal Government Act*, RSA 2000, c M-26**

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*;

s 367 A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

s 368(1) An exempt property or part of an exempt property becomes taxable if

a) the use of the property changes to one that does not qualify for the exemption, or

b) the occupant of the property changes to one who does not qualify for the exemption.

(2) A taxable property or part of a taxable property becomes exempt if

a) the use of the property changes to one that qualifies for the exemption, or

b) the occupant of the property changes to one who qualifies for the exemption.

(3) If the taxable status of property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

a) the valuation and other standards set out in the regulations,

b) the procedures set out in the regulations, and

c) the assessments of similar property or businesses in the same municipality.

Position Of The Complainant

[8] The Complainant stated that most of the subject building is occupied by the University of Alberta and Alberta Health Services. The balance, at 3,163 square feet, is occupied by privately owned and operated businesses. One is a Second Cup (a coffee shop) and the second is Roland Labahn Professional Corporation (a dental office). The Respondent has assessed the property at 4.55% taxable to reflect the area occupied by the coffee shop and dental office.

[9] The Complaint submitted an evidence package comprising 285 pages (Exhibit C-1) and argued that 100% of the property should be exempt from taxation as it satisfies the conditions of MGA s. 362(1)(d)(i).

[10] The Complainant argued that from the reading of s. 362(1)(d)(i) two criteria must be met in order for the property to be exempt. One is that it must be "held by" an educational institution. The second is that it must be "used in connection with educational purposes".

[11] The Complainant stated that the subject property is held by the Governors of the University of Alberta as stated in both the Annual Realty Assessment Notice for 2012 and the Land Title Certificate. It, therefore, meets the first criterion.

[12] As for the second criterion, the Complainant stated that, considering the location of the subject and the fact that most of the building is occupied by the university, it is self-evident that it is used by students and faculty and therefore "used in connection with educational purposes".

[13] The Complainant argued that "used in connection" should be interpreted broadly; that tax exemptions are not lost because the property has an ancillary purpose; and that the legislation does not exclude "for profit" services.

[14] The Complainant cited several court and Municipal Government Board (MGB) decisions to support their position. These included:

a. *Assessors of Areas #1 and #10 v. University of Victoria* (2010) BCSC 133 where Madam Justice Balance confirmed that the governing principle of statutory interpretation is the modern interpretation rule and quoted Driedger's statement regarding the rule [Driedger, *Construction of Statutes* (2nd ed.) 1983 at 87] (Exhibit C-1, pages 8-9);

b. *Governors of the University of Alberta v. City of Edmonton* (2005) MGB order 116/05 where the MGB stated that a broad interpretation of the term "used in connection" should be adopted. There the MGB further stated that "… it does not believe that it would be within the spirit and intendment of the Act, to carve out the subject food service areas from the broader tax exempt University and make it subject to taxation." (Exhibit C-1, page 9);

c. *Bon-Secours v. Communaute Urbaine de Quebec* (1995) 95 DTC 5017 (SCC) where the court cited comments from *The Queen v. Golden*, (1986) 1 S.C.R. 209 stating that in the construction of taxation statutes the law is not confined to a literal and virtually meaningless interpretation. The SCC also cited *Bronfman Trust v. The Queen* (1987) 1 S.C.R. 32 where that court stated that interpretation of tax legislation should be subject to the ordinary rules of construction (Exhibit C-1, pages 9-10).

[15] The Complainant cited the *Aramark* decisions to support their position that "used in connection with educational purposes" should apply to the portion of the subject occupied by the coffee shop and dental office.

In the *University of Alberta v. Edmonton (City of)*, 2005 ABCA 147 Madam Justice Fruman stated that it was not reasonable to conclude that the food services were not used in connection with educational purposes due to them being commercial, for-profit operations competing the off-campus services. She also stated that "… commercial and educational purposes are not mutually exclusive and a commercial service may be connected with educational purposes". Furthermore, Madam Justice Fruman rejected the "necessary and integral" test as too restrictive and suggested that it might be helpful to consider whether a property is used "for the purpose of achieving [educational purposes] in a practical and efficient manner". (Exhibit C-1, pages 11-12)

The Alberta Court of Appeal remitted the *Aramark* matter back to the MGB which then stated in Board Order 116/05 that the term "used in connection with" encompassed a wider range of properties than those which fall under other sections in the Act which use the terms "used chiefly for", "used solely for" or "used exclusively for".

[16] The Complainant also cited several other decisions to further support their *Aramark* position. These included:

a. *St. John's Ravenscourt School v. Metropolitan Corporation of Greater Winnipeg and Rural Municipality of Fort Garry*, (1965) 49 D.L.R. (Man Q.B.) where the Court said that education takes place during all hours of the day, during a large range of activities, and in a variety of locations (Exhibit C-1, page 13).

b. *University of Waterloo v. Ontario (Minister of Finance)*, (2002) O.J. No. 4416 where the Court said that a university contains diverse buildings (Exhibit C-1, page 13).

c. *Re University of Ottawa and City of Ottawa*, (1965) O.R. 382 in which the Court stated that it is incorrect to look narrowly at the precise use of a building when taking into consideration its function in the general scheme of the university (Exhibit C-1, pages 13-14).

d. *Assessors of Areas #1 and #10 v. University of Victoria* (2010) BCSC 133 where the court stated that universities require support services such as food services and health care clinics to reasonably attend to the needs of their students and faculty. It was further stated that ancillary functions or activities can qualify as university purposes. In that case the presence of several commercial enterprises did not preclude the property from being held or used for university purposes (Exhibit C-1, pages 14-15).

e. *Carmelite Nuns of Western Canada v. Alberta (Assessment Appeal Board)* (1994) where the court stated that exemptions are not lost because part of a building has an ancillary purpose in addition to the chief purpose (Exhibit C-1, pages 15-16).

Position Of The Respondent

[17] The Respondent advised the CARB that the tax exemption percentage increased to 96.47% from 95.45%. The change is based on a review of the leasable space in the building and the space that qualifies for an exemption.

[18] The Respondent took the position that in order for the property to qualify for the exemption, it must pass a two test application where it must be held by a body which qualifies for an exemption and it must also be used in connection with educational purposes.

[19] As for the first test, the Respondent agreed with the Complainant that the subject property is, in fact, held by the University of Alberta.

[20] As for the second test, the Respondent argued that the coffee shop and dental office area are not used in connection with educational purposes.

[21] The Respondent referred to *Assessors of Area #1 v. University of Victoria (2010)* BCSC 133 decision brought forward by the Complainant (Exhibit R-1 p.53). In this case an exemption is granted where areas of the property are used in connection with "university purposes", which is different from the wording in the MGA which exempts property where it is used for "educational purposes". The Respondent argued that "education" is a subset of "university".

[22] The Respondent's position with respect to the Alberta Court of Appeal *Aramark* decision was that the facts were substantially different when compared to the facts surrounding the subject. In the *Aramark* decision the University entered into an agreement with an independent contractor to provide food services to various locations on a cost sharing basis. There is no evidence that the coffee shop and the medical office are operated in a similar fashion (Exhibit R-1 p.54).

[23] The Respondent argued that the Complainant failed to bring forward supporting evidence that the dental office or the coffee shop on the property are *used in connection with educational purposes*.

[24] The Respondent further argued that the Complainant failed to provide lease agreements between the University and the tenants outlining as to how they serve the student population and there is only an assumption that students and/or faculty use or frequent the coffee shop or the dentist.

[25] The Respondent requested the Board to consider the following:

a. Is the business operated in the same manner as an off campus business?

b. Is the business strictly for profit or is there some sort of cost sharing scheme?

c. Is the business geared specifically toward students in terms of its product line or services and does the product line of services have a connection to education?

d. Are price subsidies offered for students?

e. Are the profits that are being generated used to fund education in some way?

f. Are the terms of the CRU lease somehow geared towards students use?

[26] The Respondent referred to the *Assessors of Area #1 v. University of Victoria* decision where the wording referred to "university purposes" versus the wording in the Alberta MGA which refers to "educational purposes" and suggested that "university purposes" is much broader than "educational purposes" (Exhibit C-1, page 75).

[27] The Respondent took the position that merely having a business on campus does not qualify it for an exemption; there must be a 'connection' between the goods and services provided to students and the business (Exhibit R-1, page 54).

[28] The Respondent stated that in accordance with sections 367 and 368 of MGA it is acceptable to provide an exemption for part of the property that qualifies for an exemption while part of the property is taxable (Exhibit R-1, pages 55-56).

[29] The Respondent argued that the subject property is on the periphery of the university campus and that although it may service some students it also services the nearby residential area and hospital across the street.

[30] The Respondent referenced a one year (2006) tax assessment agreement between the City of Edmonton and the Board of Governors of the University of Alberta which outlined assessment and tax obligations with respect to various properties on the University campus (Exhibit R-1, pages 15-20). The Respondent argued that this tax roll is not part of that agreement.

[31] The Respondent also referenced MGB Board Order 116/05 (C-1 p.147) where the order stated that the previous legislation in the Municipal Taxation Act required that a property only be held by a University to gain exemption status. The current legislation (MGA s.362) requires that a property be held by the board of governors of a university and that the property must also be used in connection with educational purposes (Exhibit C-1, page 147).

Decision

[32] The CARB accepts the Respondent's recommendation that 96.47% of the subject qualifies for a tax exemption.

[33] The CARB finds that the coffee shop and the dental office portions of the subject property are not "used in connection with educational purposes".

[34] The CARB agrees that the subject property is "held by the Board of Governors of a University".

Reasons for the Decision

[35] The CARB acknowledges that the subject property is owned by the Board of Governors of the University of Alberta and therefore "held by the board of governors of a university" as required by the MGA in order to qualify for a tax exemption. Since there is no dispute that the property is "held by" the University of Alberta, the only question to be decided is whether it is also "used in connection with educational purposes" as contemplated by s. 362(1)(d).

[36] The Alberta Court of Appeal has given direction on the meaning of the phrase "used in connection with educational purposes". In *Aramark* it clarified that properties may still qualify for

an exemption if they are used for commercial purposes in competition with off campus businesses. Further, the use to which a property is put need not be a "necessary and integral" part of the provision of education since this restrictive test would capture only a subset of properties that are "used in connection with" educational purposes. Finally, the Court suggested the following less restrictive consideration:

> "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". (exhibit C-1, page 213, para. 17)

[37] In MBG 116/05 the MGB adopted the approach suggested by the Court of Appeal as part of a broad and purposive interpretation s. 362(1)(d) , noting also that "educational purposes", broadly interpreted, can encompass properties which accommodate the diverse needs of the student body and thus contribute to the university's overall capacity to fulfill its educational function in a practical and efficient manner.

[38] The CARB agrees with the reasoning set out in MGB 116/05 which is consistent with the Court of Appeal's direction in *Aramark*. The question is whether the properties in question are used in a way that serves the needs of the student body or helps to achieve educational purposes in a practical and efficient manner. In the CARB's view the facts do not meet this test for the reasons set out below. Accordingly, the CARB is not persuaded that the dental office and coffee shop are "used in connection with educational purposes".

[39] The CARB finds that the subject property is different from the particulars in the *Aramark* decision. In *Aramark* there were several facilities in academic buildings and a student residence which clearly catered to students. In this situation the subject is not within the main campus area and there is no evidence to show that either the dental office or the coffee shop cater primarily to students. The CARB is of the opinion that the proximity of the subject building to the University of Alberta Hospital and to Whyte Avenue suggests that the coffee shop and dental office are likely frequented by members of the general public as well as by students.

[40] In *Aramark* the university had a lease agreement with the commercial food service which included profit sharing. The CARB noted that there was no evidence provided to show a similar arrangement between the university and the coffee shop or dental office. Also in *Aramark* the commercial food service did not show a profit as the focus was on keeping prices low for the benefit of the students. The CARB noted that the Complainant did not present any evidence of discounts, incentives, or benefits provided to students.

[41] The CARB reviewed the *Assessors of Areas #1 and #10 v. University of Victoria* (2010) BCSC 133. In British Columbia the legislation refers to "university purposes" whereas in Alberta the MGA states "educational purposes". The CARB accepts that the MGA requirement is narrower than the B.C. legislation. In *Assessors of Areas #1 and #10 v. University of Victoria* (2010) BCSC 133 Madame Justice Balance stated "… on its face the breadth of the phrase "university purposes" is considerably greater than of the phrase "educational purposes"; the latter is a subset of the more expansion notion of the former." (exhibit C-1, page 255, paragraph 130)

[42] The CARB also noted that in *Assessors of Areas #1 and #10 v. University of Victoria* (2010) BCSC 133 the property in question was situated in the student union buildings. Here, as previously stated in paragraph 39, the property is not located within the main campus area.

[43] Having reviewed the evidence presented, the CARB finds that the coffee shop and dental office in the subject property do not qualify for a tax exemption under MGA s. 362. Therefore the portion of the subject which does qualify for tax exemption is 96.47%.

Dissenting Opinion

[44] There is no dissenting opinion.

Heard commencing July 5, 2012.
Dated this 25th day of July, 2012, at the City of Edmonton, Alberta.

_____
Dean Sanduga, Presiding Officer

Appearances:

Chris Buchanan, Altus Group Limited
Kerry Reimer, Altus Group Limited
for the Complainant

Cam Ashmore, Legal Counsel, City of Edmonton
Moreen Skarsen, Assessor, City of Edmonton
for the Respondent