Edmonton Composite Assessment Review Board

Citation: Shepherd's Care Foundation v The City of Edmonton, 2013 ECARB 00131

Assessment Roll Number:	10213801
Municipal Address:	10311 122 Avenue NW
Assessment Years:	2012 and 2013
Assessment Types:	Annual Revised 2012 Annual New 2013

Between:

Shepherd's Care Foundation

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
John Noonan, Presiding Officer
James Wall, Board Member
Randy Townsend, Board Member

Procedural Matters

[1] The Respondent issued a revised 2012 assessment in late 2012 in the amount of $16,301,000 and an exemption percentage of 91.79%; a complaint was properly filed. The 2013 assessment of $17,057,000 was issued with a 0% exemption percentage as the Exemption Unit received the information required to determine the exemption status of the property only after the roll closed. Assessors are not permitted to make a correction or change to an assessment once the roll has closed.

[2] The Respondent recommends that the same exemption percentage of 91.79% should be applied to the 2013 assessment.

[3] In an earlier preliminary hearing it was decided to postpone the 2012 complaint against the revised assessment until such time as both the 2012 and 2013 complaints could be heard at the same time. The issues for each year are identical.

Background

[4] The subject property is a recently-constructed 4-storey 115 suite complex at 10311 122 Avenue, known as Shepherd's Care Vanguard. The complex was designed to provide aging-in-place seniors accommodation at varying standards of need as set out by Alberta Health Services (AHS).

[5] The first two floors house 56 units with the highest level of care: Secure Supportive Living Level 4-D (SL 4-D), the "D" indicating this part of the complex is for residents afflicted with dementia, and "secure" meaning that the floors are locked from unfettered public access. There are 36 studio and one-bedroom units on the third floor, built to the standards of non-secure

Supportive Living Level 4 (SL 4). The residents here receive 3 meals per day and up to 2 hours per day of personal care and support services delivered by health care aides and licensed practical nurses. The parties agree that all necessary conditions are met for tax-exempt status to apply to the first three floors of Shepherd's Care Vanguard.

[6] The fourth floor holds 23 non-secure Supportive Living Level 3 (SL 3) suites: 22 one-bedroom and 1 two-bedroom. These suites were designed to accommodate a more independent lifestyle and are equipped with full kitchen and laundry facilities. Eight of the 23 suites are occupied by AHS designated SL 3 residents. The parties agree that all necessary conditions are met for tax-exempt status to apply to the eight suites on the fourth floor occupied by AHS designated residents.

[7] The remaining 15 units (Remaining Units) on the fourth floor are either vacant or rented to residents not designated by AHS. These exemption status of the Remaining units forms the basis of this appeal.

Issue

[8] Should the 15 Remaining Units be considered exempt from taxation under s. 362(1)(n)(iv), effectively rendering the entire property tax exempt?

Legislation

[9] The ***Municipal Government Act, RSA 2000, c M-26*** (MGA), reads:

284(1) In this Part and Parts 10, 11 and 12,

(r) "property" means

(i) a parcel of land,

(ii) an improvement, or

(iii) a parcel of land and the improvements to it;

Exemptions for Government, churches and other bodies
362(1) The following are exempt from taxation under this Division:

(n) property that is

(i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,

(ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

(A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization, or

(B) by a non-profit organization,

(iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the Alberta Housing Act, or

(v) held by and used in connection with a society as defined in the Agricultural Societies Act or with a community association as defined in the regulations,

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

Property that is partly exempt and partly taxable
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.

Changes in taxable status of property
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.

[10] The ***Community Organization Property Tax Exemption Regulation,*** **Alta Reg 281/1998** (COPTER), reads:

Interpretation
1(1) In this Regulation,

(d.1) "subsidized accommodation" means

(i) rental accommodation where the Government of Alberta sets the rent at a maximum amount, sets the rent at a percentage of household income or provides the facility with ongoing operating funds,

(ii) rent to own units where the Government of Alberta sets the rent at a percentage of income or sets the rent at a maximum amount, and

(iii) accommodation where the Government of Alberta sets the mortgage payments as a percentage of income;

Part of a property

3 An exemption under section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation applies only to the part of a property that qualifies for the exemption.

Primary use of property

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this Regulation unless the property is primarily used for the purpose or use described in those provisions.

(2) For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

Non-profit organization

6 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization, community association or residents association as defined in section 13 for the property to be exempt from taxation, the property is not exempt unless

(a) the organization or association is a society incorporated under the *Societies Act*, or

(b) the organization or association is

(i) a corporation incorporated in any jurisdiction, or

(ii) any other entity established under a federal law or law of Alberta

that is prohibited, by the laws of the jurisdiction governing its formation or establishment, from distributing income or property to its shareholders or members during its existence.

Exemption under section 362(1)(n)(iv) of the Act

11 Property referred to in section 362(1)(n)(iv) of the Act is not exempt from taxation unless the accommodation provided to senior citizens is subsidized accommodation.

[11] The ***Alberta Housing Act,* RSA 2000, c A-25 (AHA)**, reads:

Definitions

1 In this Act,

(e) "lodge accommodation" means a home for the use of senior citizens who are not capable of maintaining or do not desire to maintain their own home, including services that may be provided to them because of their circumstances;

[12] The ***Municipal Affairs Grants Regulation,* Alta Reg 123/2000** (MAGR), reads:

Grants in Place of Taxes for Seniors' Accommodation Units

1(1) For the purpose of this section,

(a) "non-profit organization" means

(i) a society incorporated under the *Societies Act*, or

(ii) a corporation incorporated in any jurisdiction, or any other entity established under a law of Canada or Alberta, that is prohibited from distributing income or property to its shareholders or members during its existence or on its dissolution;

(b) "senior's accommodation unit" means a housing facility that is occupied by a senior citizen who rents or leases the facility and that is part of a property complex

(i) in which or in any part of which that senior citizen has no fee simple or life estate interest,

(ii) that may provide housekeeping, meals or other services to the senior citizen,

(iii) that is operated and held by a non-profit organization, and

(iv) that is not exempt from taxation under section 362(1)(n)(iii) or (iv) of the *Municipal Government Act* or under a regulation made pursuant to section 370(c) of that Act.

Position of the Complainant

[13] Mr. John Pray, President and CEO of Shepherd's Care Foundation (SCF), provided the Board a brief history, governance structure and mission of the organization. Since 1974, SCF has followed government direction and developed seven facilities that today house some 1600 seniors. Shepherd's Care Vanguard is the newest of these facilities, construction beginning in 2009 and residents beginning to occupy the building in 2011. SCF bought the land from the adjacent Vanguard Bible College and financed construction with the help of a $10.3 million grant from a government program, Affordable Supportive Living Initiative (ASLI). The ASLI grant covered one-third of the capital cost of construction, the balance financed by mortgage. To receive the grant, SCF had to have an agreement with AHS, documented as an addendum to the Master Services Agreement that governs AHS-SCF obligations at other facilities.

[14] Mr. Pray advised that the Edmonton office of AHS wanted to try a floor of SL 3 accommodation, a level of seniors care popular in southern Alberta, which encompasses the services of a lodge and one hour per day of personal care. SCF had misgivings about the local demand for this type of accommodation, noting the same or similar service was offered by a lot of apartment buildings, but nonetheless went ahead with the agreement.

[15] In the event, the foundation's misgivings were realized. AHS acts as gatekeeper for access to all the levels of Supportive Living though SCF frequently acts as advocate for potential residents. AHS placed only eight residents in the SL 3 part of Vanguard and this number is expected to decline over time. It was explained that SCF is required to file information with AHS on a quarterly basis regarding occupancy of the units, and AHS funding is clawed back for those units not occupied by AHS-designated residents. Faced with a substantial vacancy situation on the fourth floor and no immediate or intermediate term prospect the situation would change, especially in light of government cutbacks, SCF found itself on the unfamiliar terrain of having to market these unoccupied suites. Mr. Pray was uncertain as to how long the elevated level of vacancy persisted, though the units are all occupied today.

[16] SCF sets the rent for these 15 Remaining Units. The monthly rate of $2000 includes one meal per day and a security pendant to summon assistance if required. SCF canvassed the rents charged by other non-profit organizations for similar accommodation and set the rent at what was determined to be at the low end of the market. It was pointed out that similar accommodation in the for-profit sector would cost significantly more. Beyond the daily meal and security pendant, residents can access additional services for a fee, services such as companion care, enhanced personal care, wellness checks, housekeeping and laundry. In comparison, the residents occupying studio or one bedroom apartments in the SL 4 category would pay a regulated rate of approximately $1800 per month, including meals and 2 hours per day of health care supplied by 24-hour staff, licensed practical nurses and personal care attendants. In a world of ever-changing government nomenclature and acronyms, the SL 4 category used to be known as Designated Assisted Living (DAL). Entry to this level of care is determined by AHS, again, as is the case with SL 3.

[17] To differentiate between the units on the fourth floor, the 15 Remaining Units are referred to as Independent Supportive Living (ISL) or Enhanced Living units, though they are physically identical to the SL 3 units. Although the ISL units could theoretically be rented to anyone, subject to the site manager's approval, including a younger disabled person, Mr. Pray was not aware of any tenants younger than 65 years of age. It was not uncommon for a new resident to move in to an ISL unit, and soon need additional services. In fact, in the last six months, five of the ISL tenants have begun to receive AHS-funded home care. Despite the fact SCF has home care providers on site, AHS has chosen another organization to provide this service.

[18] Counsel for the Complainant advised the Board that historically, tax legislation was strictly construed by the courts but in recent decades a more flexible teleological approach has been favoured. The leading case on tax interpretation is *Québec v. Corp. Notre-Dame de Bon-Secours,* [1994] S.C.J. No. 78 which instructs that a legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it, and that purpose must be identified in light of the context of the statute, its objective and the legislative intent. A more recent case, *Canada Trustco Mortgage Co. v. Canada*, [2005] S.C.J. No. 56 held that the court must look beyond the mere text of the provisions and find meaning from the object, spirit and purpose of the act. SCF submits that a contextual, purposive approach to the interpretation of MGA s 362(1)(n)(iv) is aided by consideration of the province's policy documents, the "Aging-in-Place" Directive and Supportive Living Framework. These policies encourage supportive living accommodations as an alternative to nursing homes, which are no longer being built. The provision of the *Act* should not be given a restrictive reading that would run contrary to the social policy objective of providing accessible and affordable care for seniors through non-profit organizations.

[19] The dispute between the parties is not about evidence, but rather the requirements of the exemption legislation and what the words mean. Whether AHS acts as gatekeeper in accessing the Remaining Units, or whether the units rent at market or greater than market, is irrelevant in that none of that is a legislated requirement.

[20] Section 362(1)(n)(iv) has three component parts: the type of organization entitled to the exemption, the type of interest in the property, and the type of property use. SCF is a non-profit organization that holds (owns) the property for the purpose of lodge accommodation, a home for the use of senior citizens who are not capable of maintaining or do not desire to maintain their own home, including services that may be provided to them because of their circumstances. The

definition of lodge accommodation is very broad, in keeping with the government policy documents. As well, two categories of seniors are contemplated, with different needs, capabilities and motivations for entering into lodge accommodation. There is no mention that seniors who do not desire to maintain their own home need the permission of AHS to reside in lodge accommodation and avail themselves of services that may be provided to them because of their circumstances. Nor does the definition require that services provided be free of charge. In a 2008, the Municipal Government Board (MGB) accepted in *The Good Samaritan Society v. Town of Pincher Creek* (MGB Order 090/08) that services provided to seniors based on their needs included medical care, mobility assistance, medication administration, personal care, meals, laundry and pastoral care.

[21] The final element for tax exemption of seniors' lodge accommodation is found in COPTER s 11 which requires seniors' accommodation to be subsidized, defined at s 1(1)(d.1). The definition requires the Government of Alberta to set the rent at a maximum amount, a percentage of household income, or provide the facility with ongoing operating funds. The Complainant submits that this final test for exemption is also met: the Government of Alberta, through Alberta Health Services, provides Shepherd's Care Vanguard with ongoing operating funds. COPTER s 1(1)(d.1) does not refer to "unit", and one should not look at Vanguard on a unit by unit basis. If the *Regulation* specified ongoing operating funds to the rental unit, then the Remaining Units would not qualify. However, the AHS funding comes to the facility, Vanguard, and the remaining units as part of Vanguard should be tax exempt.

[22] In the view of the Complainant, the Respondent's focus on "use", requiring that there always be a senior citizen residing in the remaining units, fails to recognize the realities of tenancy turnover in seniors care lodge accommodations. This narrow interpretation is not in keeping with the Province's "Aging-in-Place" policy.

[23] The Complainant further presented a spreadsheet showing other SCF facilities in Edmonton and the similar services offered at each property. Six of these properties offered Long Term Care (nursing homes), Designated Assisted Living (now called SL 4), or Enhanced Designated Assisted Living (SL 4-D) and all received exemption. A further four properties offered Enhanced Living (Independent Supportive Living) accommodation very similar to the Remaining Units at Vanguard. SCF did not pay property tax on these facilities as the City received a grant-in-lieu of taxes from the Province.

Position of the Respondent

[24] Counsel for the Respondent observed there was significant agreement between the parties regarding the taxable status of the property, as witnessed by the City granting tax-exemption to 91.79% of Shepherd's Care Vanguard. It was agreed that the relevant legislation was MGA s 362 (1)(n)(4) and COPTER. The Respondent conceded that the property is held by a non-profit organization, and that the definition of lodge accommodation was met. It was further conceded that Vanguard's marketing was targeted to seniors. The difference between the parties was how the 15 Remaining Units were used, and whether they were subsidized.

[25] In questions, it was established that the rent for the Remaining Units was set by SCF, taking into account the rents charged by other not-for-profit organizations offering similar accommodation. Rents were set at the low end of market, at an average of $2000 per month which included one meal per day and a security pendant. Other services such as medication management could be provided for an additional fee, in order to assist the resident in staying in the unit. If the resident needed a greater level of care or service, a move to a different floor

would be required. AHS was the gatekeeper to the SL 4 standard of service as well as SL 3. The funding agreement was dated August 9, 2010, and the original plan was that all units on the fourth floor would be SL 3. Due to funding cutbacks, only 8 of the 23 suites on Level 3 receive funding from AHS, and more funding could be lost as these units are vacated.

[26] The Respondent understood that residents started moving into Vanguard November 1, 2011, and the exemption application for the entire property was received December 19, 2011. Based on December 7, 2012 correspondence with SCF, the City found out that only 8 of the 4th floor units were being used for their original purpose, and receiving AHS funding for medical and related services. Of the 15 Remaining Units, 8 were vacant and 7 occupied by renters. Prior to this correspondence, the City had no details as seniors housing does not follow the regular Annual Request for Information (ARFI) process. The assessment department applied this information to the physical condition and characteristics dates of December 31, 2011 and 2012 in preparing the 2012 amended and 2013 recommended assessments, with a tax exempt 91.79 percentage. Although there was no evidence to show that 8 units were receiving AHS funding on December 31, 2011, the City extended the benefit of doubt despite the possibility that all of the 4th floor units could have been vacant at that date.

[27] It was noted that the vast majority of MGA s 362 subsections talk of use; the exceptions were at 362(1)(a) held by the government, (b) held by a municipality, and (f) held by a regional services commission. Elsewhere, one sees a use requirement or "used chiefly for". The Respondent submitted that as of December 31, 2011 and 2012 the 15 Remaining Units were not being used to provide senior citizens with lodge accommodation, or were not subsidized. The Respondent pointed to the Complainant's evidence that AHS funding didn't extend to the Remaining Units, that AHS clawed back funding on a monthly basis for those units that were not SL 3. Clearly, the facility received funds from AHS for health-related things for 100 of the 115 units at Vanguard, but the Respondent posed a scenario where only one unit received such funds. Should then the other 114 units receive tax-exempt status?

[28] The City assesses and taxes other properties in a similar manner, such as Excel Society and Centre de Santé-St. Thomas, that provide similar accommodation and are also owned by non-profit organizations. In the case of some other properties cited by the Complainant, and again offering similar services and accommodation, the City receives grants-in-place of taxes from the province, pursuant to the MAGR. This program came into force at the time of or shortly after adoption of the new MGA in 1995.

[29] The Respondent pointed out for consideration COPTER s 3, wherein the concept of apportionment is contemplated and mandated. One cannot say that if any portion of a property receives subsidy, the entire property is tax-exempt. Similarly, MGA ss 367 and 368 speak to apportionment of time and space. Included in the evidence package was a leading case dealing with partial exemption, *Ukrainian Youth Unity of General Roman Schuchewych-Chupyrynka v. Edmonton (City)*, [1997] A.J. 921.

[30] The Respondent asked the revised 2012 assessment be confirmed, as well as the 2013 assessment with a recommended tax-exemption of 91.7%.

Decision

[31] The Board confirms the revised 2012 assessment in the amount of $16,301,000 and an exemption percentage of 91.79%, and confirms the 2013 assessment of $17,057,000 with the recommended revised exemption percentage of 91.79%.

Reasons for the Decision

[32] Included in the Complainant's legal submissions was MGB Order 090/08 which dealt with the tax exempt status of a seniors' care facility in Pincher Creek owned by the Good Samaritan Society, a non-profit organization. That Board Order examined whether the facility qualified for tax exemption under MGA s 362(1)(g.1) "held by a health region", s 362(1)(h) "nursing home", s 362(1)(n)(iii) "charitable or benevolent purpose", or s 362(1)(n)(iv) "lodge accommodation" and whether the applicable regulations of COPTER and/or other legislation were met in the case of each subsection. This CARB hearing was more limited in scope, the parties agreeing that the relevant legislation was 362(1)(n)(iv) and again, COPTER. Nonetheless, some common ground was ploughed: notably, the concept of ongoing operating funds provided by the Government of Alberta as required at COPTER s 1(1)(d.1)(i) in order to meet the definition of subsidized accommodation. Like Vanguard, the Pincher Creek Vista Village offered various services to its residents, "including medical care, personal care such as mobility assistance and medication administration, food and laundry service, and pastoral care." (MGB 090/08 p9 of 33). As pointed out in this hearing, government nomenclature is ever-changing. Vista Village offered Designated Assisted Living suites, and also had a dementia unit and a small number of palliative care beds. The Board learned at this hearing that the equivalent units at Vanguard, for the first two categories of care, are now called SL 4 and 4-D.

[33] In the Pincher Creek decision, the Board determined that ongoing funding from the Chinook Regional Health Authority met the COPTER requirement of subsidized accommodation. Contrary to the Respondent's position in *Pincher Creek*, the MGB found that the local health authority stood in the place of the Government of Alberta, that the source of the funds was the Government even though they were disbursed by an intermediary, Chinook. Unchallenged evidence was cited in the Pincher Creek case that Chinook "controls the rents and fees that can be charged to seniors occupying the units, and sets the rates below cost recovery, the balance of the costs of operating Vista Village are reimbursed through grants and assistance from CRHA. CRHA obtains funds from the Government of Alberta, and distributes them as required..." [MGB 090/08 p22 of 33]. Of interest, and worthy of comment is the fact that the Board found the Chinook Regional Health Authority a capable substitute for the Alberta Government in providing ongoing operating funds, and the various approvals and audits implied, but declined to accord Chinook the same deference in setting the rent: "CRHA establishes rate ranges at Vista Village based on guidelines set by the province in order to achieve the provincial goal of providing health care. The MGB finds that insufficient evidence was presented to determine that the Government of Alberta sets the rent at a maximum amount, or sets the rent at a percentage of household income." (MGB 090/08 p.16 of 33). [Board note: The presiding officer in this case also sat as a panelist in the Pincher Creek case and although not involved in the writing of the Pincher Creek decision, every panelist is expected to provide input, point out errors, etc., prior to decision release. It is disconcerting after the passage of a few years to re-read such a decision and discover a number of flaws, such as finding (p 22) that the physical property was not held by Good Samaritan when it was, the intent being to state that it wasn't held by the health region. On this and other points, one can only mutter. End note].

[34] The Pincher Creek decision did not address the meaning or scope of "ongoing operating funds", the phrase used in the definition of subsidized accommodation. That Board heard only that the rents were set below cost recovery, that deficits were covered by grants from the Chinook Regional Health Authority, and consequently found the property tax exempt. The point is of at least oblique interest, because here the City noted that the contributions from AHS were limited to the cost of providing health care, or personal care. The Board would expect that

operating funds would be directed to paying operating costs. In the everyday world of dealing with property assessment complaints, the CARB understands operating costs include utilities, janitorial and snow removal services, maintenance staff and expenses, even leasing costs and management expenses. All these expenses are directly tied to the real estate in question. Pincher Creek accepted, without comment, that lodge accommodation operating funds must be more expansive, to include food service, medication administration, personal grooming, and other services. Indeed, one sees in the definition of lodge accommodation "including services that may be provided to them because of their circumstances". Accommodation or at least lodge accommodation means more than brick and mortar housing.

[35] The case at hand has some differences to Pincher Creek. In that case, the subject property was delivering accommodation at Designated Assisted Living and Enhanced DAL levels, now known as SL 4 and SL 4-D. The Respondent accepts that this level of care at Vanguard is tax-exempt. Although Mr. Pray indicated he had recently delivered unfortunate news to his board of directors, in the form of an annual deficit for SCF, this state of affairs is apparently not the norm. In Pincher Creek, the MGB heard that rents were set below cost recovery, and deficits were covered by the local health authority. In other words, annual deficits were designed and expected. Since the Pincher Creek decision, the winds of change have subsumed Chinook and the other local health authorities so that today AHS stands as the sole health authority. And in the intervening years, it would appear that "ongoing operating funds" have been disbursed in a more parsimonious fashion. The Board heard that housekeeping and laundry services are no longer covered by AHS.

[36] In the current instance, the Board was presented in evidence an amending agreement that added the Shepherd's Care Vanguard facility to a master agreement, which was not presented. Nonetheless, the amending agreement gave some insight as to the funding that would be provided by AHS, and this related to care delivered by licensed practical nurses and health care aides, excluding overtime and weekends. The services to be provided included personal care such as bathing, grooming, dressing and transferring, as well as homemaking care such as housecleaning, laundry and meal preparation. These services were specified for SL 4 care, and the Board heard there is a more limited menu for SL 3. Insurance costs were specifically excluded. Despite these contractual terms, the Board also heard that AHS no longer pays for laundry and housekeeping. Unfortunately, the amending agreement made remarkably little mention of SL 3 spaces; one can only infer that the directions set out for the delivery of Level 4 care must apply to a lesser extent to Level 3, except of course in those areas dealing with staff certification, security clearances, etc. It would make no sense that Level 4 care must be delivered by persons passing a security background check, but Level 3 care positions could be filled by felons. About the only substantial mention of SL 3 care is seen in the financial schedules at the end of the document: again, while the SL 4 schedule sets out the expected annual hours for supervisors and front line staff, with accompanying cost of $1,295,842 the SL 3 schedule or appendix simply identifies 23 spaces, 8395 resident days and a sum total of $330,373. The SL 4-D schedule is likewise brief, identifying 56 spaces and annual funds of $2,584,229. These various amounts add to $4,210,444 which corresponds to the total amount of annual funding to be provided by AHS mentioned earlier in the body of the amending agreement. On the schedules, one finds a hand-written notation that the SL 4-D funding works out to $126.43 per day, the SL-4 daily rate is $98.62, and Level 3 is $39.35 per day. Despite the lack of detail in the schedules for Levels 4-D and 3, the numbers add up, and make relative sense. This was the negotiated and expected state of affairs at Vanguard going in.

[37] The Board noted that in the written materials presented by the parties there was some argument whether the rents charged for the Remaining Units were at or above market rates. The Board heard from Mr. Pray that these rates were at the low end of market, were set in reference to rates charged by other non-profits, and would be considerably higher in the for-profit sector. There was at least passing reference to these rent rates elsewhere in the oral evidence, but the Board has not fleshed out the argument in the summaries of party positions for a simple reason. The Board concurs with the Complainant's point that the legislation makes no mention of rent rates above, at, or below market rates. The parties are agreed that SCF sets the rents for the Remaining Units, and the "subsidized accommodation" question is related to ongoing operating funds.

[38] The Board saw in scant detail the "2010/2011 Annual Funding Advice" for SL 3 in Appendix 3 of the Amending Agreement. "Spaces" are listed at 23, and "resident days" at 8395. [Note: 23 X 365 = 8395]. Total funding is $330,373 or $39.35 per resident day. This amount comprises the annual ongoing operating funds anticipated for the fourth floor at Vanguard. As mentioned, the master agreement between AHS and SCF was not presented. It would have been useful to the Board to examine the contractual mechanism by which AHS apparently can and did "walk away" from the majority of the fourth floor SL-3 suites, leaving SCF in the unfamiliar position of looking for tenants.

[39] The Board heard that AHS claws back funding for Vanguard monthly, depending on the number of suites occupied by residents who have gone through the AHS assessment process and have been designated by AHS to occupy SL-3 suites. The Complainant urged the Board not to consider the fourth floor suites on a unit by unit basis but that is precisely how AHS distributes ongoing operating funds, not only unit by unit, but month by month. The Board concludes that this unit by unit method of determining the amount of ongoing operating funds also carries a consequence, tax exemption. The unit by unit funding determines whether an individual suite is subsidized accommodation.

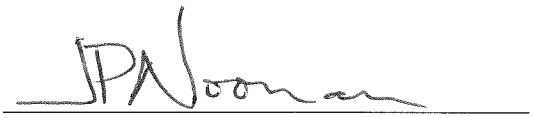
[40] The Board recognizes the 15 Remaining Units do not hover in isolated space. They would not exist without the rest of the Vanguard complex. The Board unanimously agreed that SCF is the victim of an experiment devised by others in more prosperous times. The experiment failed, or health care funding was redirected, or both. SCF was left to pick up the pieces, becoming a conventional landlord for the 15 Remaining Units where they expected to continue their task of delivering affordable, Christian care in concert with AHS. To add insult to injury, this Board decision requires the payment of property tax. Despite personal misgivings as to what should or should not be, the Board is required to forego personal opinion and instead, interpret and apply the legislation.

[41] In the legislation, the Board sees at MGA ss 367 and 368 that a property can be partially exempt, or can change taxable status on a change of occupant or use. Similarly, COPTER s 3 mandates exemption for only that part of a property that qualifies. The Board found of interest the MAGR which allows the Minister to award grants in place of taxes for seniors' accommodation units owned by non-profit organizations. The Board understands the MAGR was adopted after the new MGA came into force circa 1995. The new *MGA* had, intentionally or otherwise, made previously exempt seniors' accommodation taxable and so the Regulation grandfathered certain accommodations, allowing for grants-in-place of municipal taxes until 2016. The *MAGR* defines a "senior's accommodation unit" as a housing facility… that is part of a property complex…that may provide housekeeping, meals or other services to the senior citizen, and…that is not exempt from taxation under section 362)1)(n)(iii) or (iv) of the *MGA*.

The definition speaks of a housing facility in the singular, as part of a property complex, though it does so in the context of defining a unit. In COPTER s 1(1)(d.1) "subsidized accommodation" means rental accommodation where the Government... provides the facility with ongoing operating funds. The Complainant's argument that Vanguard is the facility, rather than the individual unit being the facility, is not extinguished: "accommodation" has a plural as well as a singular meaning, depending on context, and so does "facility".

[42] Nevertheless, the larger point is that the Minister drafted a regulation that gave favourable treatment to some seniors' accommodations, but did not extend this benefit to other accommodations, those built circa 1995 and thereafter. While SCF has a number of facilities that benefit from this favourable treatment, but for an accident of age, the "remaining units" at Vanguard do not.

Heard commencing July 2, 2013.
Dated this 1th day of August, 2013, at the City of Edmonton, Alberta.



John Noonan, Presiding Officer

Appearances:

John Pray, CEO, Shepherd's Care Foundation
Paul Govenlock, Counsel, Reynolds Mirth
Carol Zukiwski, Counsel, Reynolds Mirth
for the Complainant

Moreen Skarsen, Assessor
Steve Lutes, City of Edmonton Law Branch
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.