Edmonton Composite Assessment Review Board

Citation: Altus Group Limited v The City of Edmonton, 2013 ECARB 01989

Assessment Roll Number: 9942315
Municipal Address: 11404 89 Avenue NW
Assessment Year: 2013
Assessment Type: Annual Revised

Between:

Altus Group Limited

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Lynn Patrick, Presiding Officer
Martha Miller, Board Member
Mary Sheldon, Board Member

Procedural Matters

[1] In response to an inquiry by the Chair, the parties acknowledged that there was no objection to any of the members of the panel hearing this matter. The panel members each acknowledged that they held no bias in respect to this matter.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] The subject property is located upon the campus of the University of Alberta. It is comprised of a seven story building containing 248,186 square feet, located upon a parcel of land containing 70,320 square feet, known as the Students' Union Building or SUB. The assessment of $9,970,000 for the subject is not contested. The assessment provides that 96.30% of the property is exempt from taxation. The remaining 3.70% is assessed as not exempt from taxation. The Complainant requests that the exemption be extended to 98.30% of the property reducing the non-exempt portion to 1.70% of the property. The Respondent recommended that the non-exempt portion of the subject be reduced to 3.538% of the property which would extend the exemption to 96.462% from the assessment exemption of 96.30%.

Issue(s)

[4] The issue in this matter is what portion of the subject property meets the requirements for exemption from taxation under section 362(1)(d)(i) of the *Municipal Government Act,* RSA 2000, c M-26 (the *Act).*

Legislation

[5] The *Municipal Government Act*, RSA 2000, c M-26, reads:

> s 1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.
>
> 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* .
>
> 365 (1) Property that is licensed under the *Gaming and Liquor Act* is not exempt from taxation under this Division, despite sections 351(1)(b) and 361 to 364 and any other Act.
>
> 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

[6] At the outset the Complainant acknowledged that the assessed value of the subject property of $9,970,000 is not at issue in this matter. The issue is confined to the matter of what portion of the subject property is exempt from taxation as distinct from the question of exemption from assessment.

[7] The Complainant referred the Board to its Disclosure and Witness Report (Exhibit C-1, 323 pages) and also presented oral argument. The written brief provides a description of the subject property uses which becomes the basis for the complaint. In addition to the usage by the Students' Union the property contains student offices, study areas, a book store, the University Health Center, Banks' ABMs (4) area, retail and fast food outlets and a licensed lounge. The square footage of the exempt assessed area is 9,180 square feet of which the licensed lounge occupies 4,250 square feet. The Complainant agrees that the licensed lounge area which holds a liquor license is not exempt thus leaving the remaining commercial spaces totaling 4,930 square feet (1.70%) as the space subject of the complaint.

[8] The Complainant notes that section 362 of the *Act* establishes two provisions that must be met to entitle the property to have a tax exempt status. The first provision is that the property must be used in connection with educational purposes and the second provision is that the property must be held by the board of governors of a university. The Complainant has produced to the Board a number of copies of Alberta Land Title Certificates in the name of The Governors of The University of Alberta which represent the fee simple ownership of the properties described in the Assessed Person and Legal Description sections of the Assessment Notice (Exhibit C-1, pp 31 to 41). The Complainant notes that the Respondent does not take issue with the contention that the property is held by the board of governors of a university thus satisfying the second provision relating to taxation exemption.

[9] The Complainant contends that the provision that the property must be used in connection with educational purposes has received consideration by the Assessment Review Board, the Municipal Government Board, the Alberta Court of Queen's Bench and the Alberta Court of Appeal. Additionally the Complainant submitted cases from British Columbia, Ontario and Manitoba in support of its contention that the commercial properties within the SUB building are with the exception of the licensed lounge entitled to the tax exemption applicable to the rest of the subject property.

[10] The Complainant submits that in pursuing the question of "used in connection with educational purposes" the courts have determined that a broad interpretation of the legislation is be applied. This has resulted in the courts finding that the intent of the legislation is to provide universities with tax relief. The Complainant notes that the subject group of properties denied exemption by the Respondent are commercial properties including fast food outlets. It is the contention of the Complainant that the cases do not support that position and that the commercial characteristic of the group is not the determinate criteria for such consideration. The cases cited by the Complainant on pages 12 and 13 of Exhibit C-1 are submitted in support of the principal of broad interpretation.

[11] As examples of the application of that interpretation, the Complainant submitted two CARB decisions respecting the same issue affecting the HUB Mall property at the University of Alberta campus. The decisions respect the 2012 and 2013 taxation years and in both cases the CARB found that 100% of the retail was exempt as falling within the term, "used in connection with educational purposes". The Complainant acknowledged that while these decisions are not binding upon this Board, they are persuasive because of the similarity of the commercial content particularly the fast food outlets.

[12] The Complainant made submissions respecting the decision of the Alberta Court of Appeal in the case of *University of Alberta v. Edmonton (City of), 2005* ABCA 147 [*Aramark*], noting that the case deals with the two criteria in section 362(1)(d)(i) of the Act. Fruman J.A. commented on the use issue suggesting that it was not reasonable for the Municipal Government Board to decide that commercial services were excluded from being considered as connected with educational purposes broadly speaking. The Court rejected the test used by the Municipal Government Board being the "necessary and integral part" test as too restrictive and not in accordance with broad interpretation of plain wording of the Act. Madam Justice Fruman went further by setting a test which the Complainant contends is binding upon the Board. That test is "whether the property is used for the purpose of achieving educational purposes in a practical and efficient manner".

[13] The Complainant submits that the interpretation and application of that test is illustrated by the decision of the MGB in its reconsideration of the *Aramark* case in Board Order 116/05. The MGB did not believe that it would be within the spirit and intendment of the Act to carve out the food services areas from the broader exempt property. It accordingly found the commercial property, in that case the food services, were exempt as educational purposes can encompass properties which "...accommodate the diverse needs of the student body and contribute to the capacity of the University to fulfill its ultimate degree-granting function..." and "...assist in the achievement of educational purposes in a practical and efficient manner."

[14] The Complainant submits there is support for this position in cases outside of Alberta such as the University of Victoria case, 2010 BCSC 133 and the University of Windsor case, [1965] 2 O.R. 455 although the phrase used in the legislation is "university purposes" the point that commercial use is not incompatible with an educational use and suggests that they reflect the meaning of "practical and efficient manner".

[15] In summary the Complainant submitted that the 2012 and 2013 CARB decisions regarding HUB Mall both endorsed the *Aramark* decision as applied to educational purpose and the test of practical and efficient manner to achieve the purpose. The Complainant submitted that the decision of Lee J. in *Edmonton (City) v. Governors of the University of Alberta, 2013 ABQB* 440, which appears in the Respondent's Exhibit R-1, notes that the 2012 CARB decision which was before him on an application for leave to appeal had relied upon *Aramark*, a decision binding upon both the CARB and the Court of Queen's Bench.

[16] The Complainant requested that the subject property receive an exemption from taxation for 98.30% of the property leaving only 1.70% taxable represented by the licensed lounge known as "Room at The Top" occupying 4,250 square feet of the top floor of the Students' Union Building.

Position of the Respondent

[17] The Respondent acknowledged that the parties were in agreement that the subject property is in the Land Titles Registry in the name of the Complainant, The Governors of the University of Alberta, thus satisfying the requirement that the property be held by the governors of a university as required by section 362 of the MGA.

[18] The Respondent acknowledged that it has made a recommendation to correct a provision of the assessment. The recommendation is to remove the portion of the subject occupied by the University Health Center from the taxable property to the exempt property. This results in an increase in the exempt to 96.462% and the taxable reduced to 3.538%.

[19] The Respondent contends that the Complainant has not provided the Board with sufficient evidence to connect the commercial space in SUB with educational purposes as required by section 362. Although there is no definition of educational purposes in the MGA, a plain reading of the words would mean that those areas that serve commercial purposes do not serve educational purposes.

[20] The court cases from Alberta include the Alberta Court of Appeal case known as *Aramark* in which the court dealt with the use test and rejected the MGB test that to qualify for educational purposes it had to be a necessary and integral part as too narrow. The court set a new test of "for the purpose of achieving educational purposes in a practical and efficient manner"

and sent it back to the MGB to make a determination based on that test. The test is binding upon the Board but the result of the rehearing by the MGB is not.

[21] The Respondent submits the correct way to apply the test is to identify the connection to education and not to apply the test of convenience. The Respondent submits that to do so is contrary to the principles of statutory interpretation. The modern principle of statutory interpretation often cited in the jurisprudence is as it appears in Dreiger, *Construction of Statutes, 2d.ed.* That principle is that the words of an Act must be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme and the object of the Act and legislative intention.

[22] The Respondent contends that the lack of connection to educational purposes by the Complainant means the Complainant has not met its burden of proof and therefore the complaint ought to be dismissed.

[23] The Respondent notes that in both the British Columbia and Ontario cases involving universities (Exhibit C-1, page 254 and page 310 respectively), the phrase used is "university purposes" as contrasted with "educational purposes" and thus ought to be disregarded because the former has much broader application.

[24] The Respondent further submitted that for the property to be exempt it had to have more than a tenuous connection of being a convenience to the university population and to have an educational use that connects it to the education process.

Decision

[25] The University Health Center is not a commercial business operated independently and is properly exempt from taxation.

[26] The licensed lounge known as RATT consisting of 4,250 square feet is not exempt from taxation by reason of section 365(1) of the MGA.

[27] All the remaining commercial premises including the retail, bank machine and food outlet spaces are exempt from taxation.

Reasons for the Decision

[28] The Board considered the provisions of section 362(1)(d)(i) of the MGA and notes there are two criteria for exemption from taxation status for the subject property. The second criteria appearing in the section requires the property to be held by a board of governors of a university. The evidence presented by the Complainant by way of copies of titles registered in the Land Title Registry respecting the land described in the Assessment Notice is sufficient evidence to satisfy this requirement. In addition the Respondent does not take issue with this matter and the Board grants substantial deference to that position.

[29] The remaining issue in this complaint is whether the subject property in its entirety or to what extent is used in connection with educational purposes. The Board considered all of the evidence and arguments presented by the parties in respect to this question. The Board finds that the phrase "university purposes" in some of the cases is not the same as "educational purposes" and thus has determined that lesser weight is put on the findings and comments by the courts in those decisions.

[30] The leading case and one found by the Board to be binding upon it is the Alberta Court of Appeal decision in *Aramark.* Fruman J., in discussing the use criteria, noting that educational purposes is not defined, established a test in place of the "necessary and integral" one set forth by the MGB in that case. The court stated:

> "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 properties are used "for the purpose of achieving [educational purposes] in a practical and efficient manner"

[31] The court in *Aramark* went further and stated that:

> "...commercial and educational purposes are not mutually exclusive and a commercial service may be connected with educational purposes..."

[32] The Board finds that the commercial properties in SUB are not necessarily used for educational purposes but are used in connection therewith. This meets the test of used for the purpose of achieving educational purposes in a practical and efficient manner.

[33] The Board notes that in adopting the modern principal of statutory interpretation as it applies to section 362(1)(d)(i), such approach is consistent with the views of the court in *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.), that:

> "Education is not a matter of a few hours a day. The idea is to aim at covering all actions of the day. Education is imparted not only through academic teaching, but even through casual remarks in all phases of human activities, as the occasion may arise....Education takes place not only in the classroom, but on the playing fields, in the dining rooms and study-rooms..."

[34] The Board finds that the Complainant did provide sufficient evidence of connection by the commercial properties to the educational purposes of the University and that such connection brought the properties in question to the exempt status being requested by the Complainant under section 362(1)(d)(i) of the MGA.

Dissenting Opinion

[35] There is no dissenting opinion.

Heard on December 5, 2013.

Dated this 16th day of December, 2013, at the City of Edmonton, Alberta.

Lynn Patrick, Presiding Officer

Appearances:

Chris Buchanan
for the Complainant

Amy Cheuk
Karen Perry
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.