

**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(4).

between:

NAV CANADA Inc., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L. Lundgren, PRESIDING OFFICER

J. Rankin, MEMBER

S. Rourke, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	009020504
LOCATION ADDRESS:	8925 Barlow Trail NE
HEARING NUMBER:	56591
ASSESSMENT:	\$ 11,260,000

This complaint was heard on the 10th day of November, 2010 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *Brian Dell* *Solicitor for the Complainant*
- *John Clark* *Appraiser with the Regional Group of Companies*
- *Ross Mosher* *Senior Real Estate Analyst with Nav Canada*

Appeared on behalf of the Respondent:

- *Christina Dao* *Solicitor for the Respondent*
- *Kevin Buckry* *City Assessor*

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

There were no procedural or jurisdictional matters.

Property Description:

The subject property is an air traffic control tower situated on 10.32 acres of federally owned land at the Calgary International Airport. The 42,163 square foot tower is used by Nav Canada to provide civil air navigation services. The property is valued on the cost approach and the Complainant is seeking additional depreciation on the improvement. The Complainant is also seeking tax exemptions for the property.

Points of Agreement:

- a) The correct size of the improvement is 42,163 square feet.
- b) The cost approach plus land value is the appropriate method of valuation.
- c) Both parties used \$3,371,630 for the land value in the final calculation of the assessment.
- d) The underlying title to the lands is with the Federal Crown. The Federal Crown owns fee simple title to one parcel of land consisting of over 4,000 acres upon which the Airport is located. The Calgary Airport Authority leases the 4,000 acres from the Crown, and the Crown in turn leases back certain areas within the parcel. The leaseback includes the area upon which the control tower sits. The Crown has then assigned the leaseback of the tower site to Nav Canada. Nav Canada pays no rent.
- e) Redevelopment at the Airport will see a new north-south runway being built on the eastern side of Barlow Trail. As a result, a new air traffic control tower will be required. This change in configuration at the Airport is a form of external obsolescence. No allowances for external obsolescence have been recognized in the assessment.

Issues:**1. Valuation**

- a) Whether the navigation tower has received an appropriate level of depreciation arising from all causes?
- b) Is there a market for the property or is its value otherwise nominal?
- c) What is the appropriate land value?

2. Exemption

- a) Is the interest of the Federal Crown exempt from taxation pursuant to s. 362(1)(a) of the *Municipal Government Act*?
- b) Is Nav Canada exempt from taxation pursuant to s. 362(1)(n)(iii) of the *Municipal Government Act*?

Legislation:

The relevant sections of the *Municipal Government Act* and the *Community Organization Property Tax Exemption Regulation*, AR 281/98 are appended.

Complainant's Requested Value: \$6,071,501 for land and improvement

Board's Decision in Respect of Each Matter or Issue:**1. Valuation**

- a) **Whether the navigation tower has received an appropriate level of depreciation arising from all causes?**

Summary of the Complainant's Position

The Complainant argued that external depreciation should be applied to the improvement owing to the fact that the traffic control tower is near the end of its economic life. The Complainant explained that Nav Canada's complaint is based on the fact that CAA has reconfigured plans for the airport including a new runway which necessitates the relocation of the air traffic control tower and the closing of the current tower. The current tower will be surrendered to the CAA and as the CAA has no use for the current tower, it plans its demolition. In the written summary following the hearing, the Complainant adjusted the economic life to 24.5 years from the original projection of 22 years in response to comments made by the Respondent at the hearing with respect to the uncertainty of the demolition date. The current and new towers will be used concurrently for fitup and training of staff in the new tower only up to the date the new tower is commissioned in November 2012. This has now been recognized by extending the economic life by 24 months. The new tower is contractually required to be in service in November 2012

and the existing tower will be completely obsolete after the new tower comes into use in December 2012. The new tower will not only accommodate the new runway, but also existing runways, regardless of the new runway completion date.

The Complainant argued that the Respondent has failed to establish any reasonable approach to account for external depreciation. The Respondent's method of calculating the depreciated replacement cost new of the improvement accounts for only physical and functional depreciation, whereas, the Complainant's age/life method of calculating depreciation reflects all forms of depreciation including external depreciation. Using the age/life method and the revised area of 42,163 square feet, the fully depreciated replacement cost new reflecting all forms of depreciation is \$2,699,871 (exclusive of land value).

Summary of the Respondent's Position

The Respondent agrees with the Complainant that Nav Canada's lease nears the end of its term. The majority of the Complainant's legal argument is based on the premise that the control tower will be demolished in 2012 and that there is 3 years of economic life remaining in the control tower. Although there is evidence that the control tower would likely be demolished, there is also evidence that the current tower and the new control tower being built would function in parallel for some time. It is uncertain whether the control tower will be demolished in 2012 or at some point thereafter.

The Respondent submitted that the Complainant's estimate of value for the control tower is based on the premise that the control tower will actually be demolished in 2012. The Respondent respectfully submitted that there has not been any evidence produced to support the position that the control tower will definitely be demolished in 2012 and therefore, a depreciation of 44.5% and further external depreciation of 60% as the Complainant suggests would not be appropriate.

With respect to the valuation of the subject improvement, the control tower is fully operational and fully occupied. It is in good condition and has been well maintained. The Respondent disagrees with the Complainant that the utility of the improvements in the market place is limited to alternative uses of the basement and grade level office areas. There is no evidence to suggest these areas would not be able to continue as office, education and training for use by a new tenant. The Respondent submitted that once Nav Canada vacates the control tower, it is possible that a new tenant could absorb this space. As well, the cab portion of the control tower could be used to supplement the CAA security and emergency operations with a satellite location. In the written summary, the Respondent provided a revised depreciated replacement cost new estimate of \$7,376,853 for the improvement. The revised value was calculated using 42,163 square feet at \$300.62psf, less 41.8% for physical and functional depreciation. It is noted that the Respondent used \$315.62psf to prepare the original assessment.

The Respondent submitted that if external obsolescence depreciation needs to be recognized and quantified, then it is extremely minimal for the current assessment year. The Respondent submitted that the revised calculated value for the improvement is \$7,025,575.

Board's Decision:

The Board notes that the parties agree that there is no allowance for external depreciation in the current assessment, however, there is no agreement on the method to be used to calculate or

quantify the external depreciation. The Board finds that additional depreciation should be applied to the improvement because the typical forms of depreciation which are accounted for in the assessment do not fully recognize the fact that the control tower will be decommissioned within a short period of time. The Complainant's evidence of the age of previous control towers when decommissioned supports a typical life expectancy of 30 years for the subject tower. The Board also accepts the evidence of the Complainant that Nav Canada has not purchased or sold an air traffic control tower to a third party since its inception in 1996 and there are no plans to sell this control tower and the tower would have little or no value when decommissioned. The Board will use the straight line depreciation method and a life expectancy of 30 years to recalculate the assessment for the improvement.

Basic Structure Cost	\$12,675,004
Less 5% gst	\$ 633,750
Less 63.33% depreciation	<u>\$ 7,625,726</u>
Depreciated Replacement Cost New	\$ 4,415,528

Based on the above reasons, the Board reduces the improvement assessment to \$4,415,528.

b) Is there a market for the property or is its value nominal?

Summary of the Complainant's Position

The Complainant stated that the Assessor acknowledged that Airport lands do not sell in the marketplace and that there is no similar market for the Airport lands. It is submitted that the Board must consider whether there is any market value or exchange value for the land or improvement. The requirement in a market value system is to reflect exchange value, rather than a value in use. The Complainant cited the authority *Gander International Airport Authority v. Gander (Town)* [2008] N.J. No. 183. As indicated in the *Gander* case:

Given that the mandate to the assessor under section 17 of the legislation is to find a market, it seems perverse that with clear evidence that there is no market and also no alternate use, we would be left with a hypothetical construct of market value based on a determination of replacement cost, less depreciation and functional obsolescence.

The Complainant submitted that the foregoing demonstrates that where a property has no market (either land or improvement), a nominal value is appropriate. The *Gander* case went on to conclude that the Gander Airport Authority had no real property interest to buy or sell, either in reality or hypothetically and had no real property wealth to form the basis for municipal taxation.

The Complainant concludes by stating that even should the Board find there exists a conceivable market for the air traffic control tower, the principles set out in the authorities undoubtedly offer strong support for the economic obsolescence quantification of the Complainant.

Summary of the Respondent's Position

The Respondent submitted that Airport properties do not sell with complete 100% interest since the title to the land cannot transfer. This does not mean there is not a value to the land as "fee

simple" ensures that the CAA's interest is also captured as well. Land has a value and interest to both the tenant and the CAA.

The Respondent refutes the Complainant's references to the *Gander* case because the Gander Airport is not an economically viable airport and thus, is not comparable to the Calgary Airport. Gander's location, population and desolate economic situation results in there being no market and no alternative use for land at the Gander Airport. Land at the Calgary Airport is a valuable asset, especially airside land, which is a finite resource with unique characteristics and few effective substitutes.

Board's Decision:

The Board is not persuaded by the Complainant's argument or suggestion that there is no market for the subject land or that its value is nominal. The Board finds that the subject land has value to CAA and/or the Crown irrespective of whether it is for sale or not.

c) What is the appropriate land value?

Summary of the Complainant's Position

The Complainant submitted that the land value approach used by the Assessor is reasonable if valuing a 10 acre parcel of unencumbered land in the vicinity of the Airport, and given the topographical issues discussed by the Assessor at the hearing. The Assessor returned a land value of \$3,371,630 based upon a primary acreage site of 4.73 acres at \$675,000 per acre and secondary acreage of 5.59 acres at \$32,000 per acre. The lesser value was applied to the 5.59 acres because of topography issues. However, the Assessor was valuing a 4000 acre parcel of land and not a 10 acre site. Section 284(2) of the *Municipal Government Act* provides that where land is held under lease, license or permit from the Crown, that will include a part of the parcel. The intent is to provide for an assessment of Crown lands to a taxable occupant where the entire parcel has not been taken up. This section does not serve as justification to value the land as if it was a stand alone 10 acre parcel. The Complainant gave evidence as to the assessment of a golf course consisting of approximately 300 acres located on the Airport land which has been assessed at \$20,000 per acre. The Complainant concluded by submitting that it is open to the Board to consider whether there is a market for the lands (and the improvement) and adjust downward for a lack thereof.

Summary of the Respondent's Position

The Respondent argued that the rate of \$675,000 per acre used to assess the primary acreage is correct. In support of this argument, the Respondent provided six sales comparables located in the vicinity of the airport. The time adjusted sale price of the sold properties ranged from \$727,027 to \$1,503,029 per acre. The Respondent also argued that the assessed rate is equitable, and provided two equity comparables. Both Imperial Oil and Westjet Airlines are assessed using the land rate of \$675,000 per acre. The Respondent asserts that the fact that airport properties do not sell with complete 100% interest, does not mean that there is not a value to the land as "fee simple". Land has a value and interest to both the tenant and the CAA.

The Respondent submitted that the land is valued at \$3,371,630 and the control tower is valued at \$7,025,575. Due to the adjustment to the total area of the improvement, the revised

calculated value is \$10,397,205. The Respondent requested that a very minimal value be given for "external" depreciation and that the figure be rounded to \$10,000,000. The Respondent asked the Board to deny this complaint and set the property assessment at \$10,000,000.

Board's Decision:

The Board finds the best indicators of market value for the land are the land sales presented by the Respondent for sold properties in the vicinity of the Airport. These land sales range in value from \$727,027 to \$1,503,029 per acre, and the two sales of similar size parcels sold for \$877,358 and \$727,027 per acre. The land rate of \$675,000 per acre is supported by these sales and the land assessment of \$3,371,630 is confirmed.

As a result of the foregoing Board decisions, the total property assessment is reduced to \$7,787,158 (rounded to \$7,787,000). The total value is comprised of the improvement value of \$4,415,528 plus the land assessment of \$3,371,630.

2. Exemption

- a) **Is the interest of the Federal Crown exempt from taxation pursuant to s. 362(1)(a) of the *Municipal Government Act (MGA)*?**

Summary of the Complainant's Position

The Complainant submitted that when the Crown in Right of Canada owns land, the residual interest of the Crown in property is not taxable according to section 362(1)(a) of the Act. The City is required to tax an occupant of Crown Lands only on the basis of the interest held by the occupant in accordance with the proportion of the assessment attributable to the taxable occupant's interest. This has not been done in the within case.

The Complainant referred to a document produced by Alberta Municipal Affairs, entitled *Assessment & Taxation Of Privately Operated Provincial Campgrounds*, that recognizes the need to account for the residual interest of the Crown under section 362(1)(a). The guidelines in this document would suggest a 45% apportionment of the overall assessment in the case of Nav Canada in relation to the evidence presented at the hearing. The percentage breakdown of the rights that have been transferred is: Enter and use as desired 25%, Exclude others 10% and Peaceful possession and quiet enjoyment 10% which results in a taxable interest of 45% for Nav Canada. Nav Canada has no right sell donate or dispose of the property, cannot lease or collect rent, and cannot mortgage or pledge. Nav Canada is statutorily bound to provide the services established under the *Civil Air Navigation Services Commercialization Act*.

Summary of the Respondent's Position

The Respondent submitted that section 362(1)(a) of the *MGA* states that any interest held by the Crown in right of Alberta or Canada in property is exempt from taxation. There is no mention in this provision in regards to either the residual interest being not taxable or in regards to the requirement of a municipality to tax Crown lands only on the basis of the interest held by the occupant in accordance with the proportion of the assessment that is attributable to the taxable occupant's interest. The document referred to by the Complainant concerns the assessment and taxation of privately operated provincial campgrounds and is not applicable as the subject

property is not a privately operated provincial campground.

Board's Decision:

The Board finds that the guidelines for the Assessment & Taxation Of Privately Operated Provincial Campgrounds do not apply to the subject property because it is a control tower, not a privately operated campground. Accordingly, the request for exemption under s. 362 (1)(a) is denied.

b) Is Nav Canada exempt from taxation pursuant to s. 362(1)(n)(iii) of the *Municipal Government Act*?

Summary of the Complainant's Position

The Complainant submitted that Nav Canada was incorporated under the *Civil Air Navigation Services Commercialization Act*, and was set up to acquire, own, manage, operate and develop the Canadian Air Navigation System. Nav Canada's objectives included to preserve and promote safety in air navigation in a safe, secure, efficient and cost effective manner. Nav Canada manages and operates Canada's air navigation system for the benefits of the users of the air navigation system and the general public. It is required to do so in a manner to ensure owners of aircrafts are not charged undue fees for services, and that fees are not discriminatory. Nav Canada is statutorily bound to charge only fees that would generate revenues sufficient in relation to the provision of its services. If any excess revenues exist, those revenues go back towards fee reduction and reducing costs for services. Nav Canada is a non-share capital corporation that is prohibited from making distribution to its members.

The Complainant submitted that, in addition to air traffic control, Nav Canada provides related services with respect to weather, aeronautical information services and flight information services. Nav Canada's Calgary operation provides exclusive air traffic control over runways at the Airport and a cylinder of airspace over Calgary and area. Air traffic outside of the Calgary airspace is controlled by Nav Canada's Edmonton operations.

The Complainant argues that these facts carry a right of exemption under 362(1)(n)(iii) of the MGA and the regulations thereto. A plain reading of 362(1)(n)(iii) of the MGA provides for a municipality to exempt properties from taxation if those properties are: used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by the Crown in right of Canada and held by a non-profit organization, and the property qualifies under Part 2 of AR 281/98.

The Complainant referenced the *Community Organization Property Tax Exemption Regulation*, AR 281/98, which provides:

Interpretation

Section 1(1)(b) - charitable or benevolent purpose means any purpose that is beneficial to the community. Undoubtedly having unitary and regulated control over airplanes flying over Calgary, providing weather services and flight services is a benefit to the community. An

example of the beneficial services provided to the community can be found in the *Civil Air Navigational Services Commercialization Act*, definition of “air traffic control services” which means services, other than flight information services, provided for the purpose of preventing collisions between aircraft, aircraft and obstructions, and aircraft and vehicles on the manoeuvring area; and expediting and maintaining an orderly flow of air traffic.

Section 1(1)(c) – general public pertains to the general community. This does not mean that a benefit must accrue to all persons. The Complainant referenced these authorities: *Ukrainian Youth Unity of General Roman Schuchewych-Chuprynska v. Edmonton (City)* [1997] A.J. No. 921, *Alberta Assn. for Community Living v. Alberta (Municipal Government Board)* [2000] A.J. No. 468, and *Winnipeg (City) Assessor v. Law Society of Manitoba* [2010] M.J. No. 263. In the *Ukrainian Youth of General Roman Scuchewych-Chuprynska v. Edmonton (City)* [1997] A.J. No. 921 decision, the phrase “for the benefit of the general public” is given meaning. It states, in part, “The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply;...”. In any event, averting potential disasters in and around Calgary through regulated air traffic control is a benefit to the whole of the Community.

Part 1 General Rules

Section 4(1) and (2) – property must be primarily used for the beneficial purpose. The property is stand alone and used 100% of the time for Nav Canada’s purposes.

Section 5 – the organization must hold the property under a lease, licence or permit from the Crown. The Crown owns the fee simple interest in the Airport lands. The words “held by” are to be construed broadly as determined in *University of Alberta v. Edmonton (City)* [2005] A.J. No.421. In support of the argument that the property is held by Nav Canada under a lease, the Complainant provided a copy of the Assignment Of Lease For Land at the Calgary Airport, Alberta between NAV Canada and the Airport Authority, as well as a copy of the Lease-Back Agreement between Her Majesty The Queen In Right Of Canada and The Calgary Airport Authority.

Section 6 – the non-profit organization can be incorporated under the laws of Canada and must be prohibited from distributing income to its shareholders or members. Nav Canada must direct all of its income to its objects. Using income to reduce user fees is not a distribution to shareholders or members.

Section 7 – the use of the property must not be restricted by the requirement to pay fees except for minor entrance or service fees. The fees are governed by the charging principles set out in section 35 of the *Civil Air Navigational Services Commercialization Act*.

Part 2 Qualifications for Exemptions Under Section 362(1)(n)(iii)

Section 10 – the property must be used for a purpose that benefits the general public in Calgary and the resources of the organization must be devoted chiefly to the beneficial purpose. Nav Canada is statutorily bound to devote 100% of its resources to ensure safe, efficient and effective air traffic control and related services.

The Complainant submitted that Nav Canada meets all the requirements for exemption under s. 362(1)(n)(iii) and the Regulation, and that the property is 100% exempt.

Summary of the Respondent's Position

The Respondent explained that section 362(1)(n)(iii) of the *MGA* includes a qualifier that the property must meet "the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations". The qualifications and conditions that are contemplated in section 362(1)(n)(iii) of the *MGA* are laid out in the *Community Organization Property Tax Exemption Regulation*, AR 281/98 ("COPTER").

The Respondent submitted that, in this matter, the relevant qualifications for an exemption are set out in Part 1 and Part 2 of COPTER. The relevant sections from these Parts in COPTER include but are not limited to, considerations of section 3 (part of the property), section 4 (primary use of the property), section 5 (holding of the property), section 6 (distribution of income or property), section 7 (meaning of restricted), and section 10 (property is primarily used for a charitable or benevolent purpose).

The Respondent submitted that there is insufficient evidence before the Board that demonstrates that Nav Canada meets all the qualifications and conditions laid out in the *MGA* and COPTER.

Section 7(3) – The Complainant, Nav Canada, submitted in its oral closing argument before the Board that section 7(3) of COPTER applies. Section 7(3) states: "Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted." The Respondent argues that the purpose of the Control Tower is its operational use to ensure air traffic control and related services. The use of the property is restricted not necessarily because of safety or liability, but because of the operational demands that are in place as Nav Canada is federally mandated to provide such services. This operational use can be distinguished from safety or liability reasons. Therefore, the use of the subject property is for the Calgary airport and the Complainant has not demonstrated how this property is not restricted.

Section 10(1) – states that property in section 362(1)(n)(iii) is not exempt unless the charitable or benevolent purpose benefits the general public and the resources of the non-profit organization is devoted chiefly to the charitable or benevolent purpose for which the property is used. A "charitable or benevolent purpose" is defined in COPTER as "the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community". The Respondent submitted that the use to which Nav Canada uses the subject property cannot be characterized as a charitable or benevolent purpose as intended by the legislators.

The Respondent submitted that Nav Canada is federally mandated to provide air traffic control services, and if the legislators had intended Nav Canada to be exempt, the legislators would have provided for this in the statute. There is no such provision of an exemption for Nav Canada in the federal statute, nor is there any specific provision for an exemption for Nav Canada under the *MGA*. If the legislator had meant to include a particular provision within the legislation, there would have been an express reference to it. As the legislator did not expressly mention a provision for exemption to Nav Canada, it can be inferred that this was deliberately excluded.

The Respondent stated that the issue of exemption for Nav Canada was dealt with in Board

Order MGB 293/98 and a copy is provided. The Appellant's (Nav Canada) request for an exemption from taxation, within the Municipal Government Act, section 362(1)(n)(iii) and Alberta Regulation 125/95 was denied. In this decision, the Board finds that Nav Canada cannot be characterized as using the property for a charitable purpose, or a benevolent purpose, or for the benefit of the general public, or is a non-profit organization.

Summary of the Complainant's Rebuttal

The Complainant made the following points in rebuttal. It must be noted that the Respondent called no evidence regarding the section 362(1)(n)(iii) exemption and did not challenge Nav Canada's evidence. The Respondent ignores the conjunctive language of COPTER. For example, "or any other purpose beneficial to the community" is clearly indicative that Nav Canada qualifies. The position of the Respondent that Nav Canada has not been explicitly mentioned in the legislation as exempt is without merit. And finally, the judicial authorities provided by Nav Canada clearly oust the flawed reasoning and narrow reading of COPTER in MGB 293/98.

Board's Decision:

In deciding this matter, the Board reviewed Section 362 (1)(n)(iii) of the *Municipal Government Act* (MGA) together with the section on interpretation and the general rules in Parts 1 and 2 of the *Community Organization Property Tax Exemption Regulation (COPTER)*, and finds as follows.

First, the Board looked at section 1(1)(b) of COPTER, the definition of "charitable or benevolent purpose" which means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community. The Board focussed on the words or any other purpose beneficial to the community. The purpose of Nav Canada is to provide a safe and efficient air navigation service. The customers, airlines and other owners and operators of aircraft, are provided with services such as: air traffic control, flight information, weather briefings, airport advisory services, aeronautical information services and electronic aids to navigation. Nav Canada is the only provider of these services at this airport, and the Board finds these services to be essential services that are of benefit to the entire community. Whether or not every member of the general public chooses to fly in or out of Calgary, a safe secure air transportation system is beneficial to the community.

Second, the Board reviewed section 1(1)(c) of COPTER, the definition of "general public" which means pertaining to the general community, rather than a group with limited membership or a group of business associates. The Board finds that a more liberal interpretation of the general public is required than was applied in Board Order MGB 293/98. Madame Justice Bielby, in the decision *Ukrainian Youth Unity Of General Roman Schuchewych-Chuprynska v. Edmonton (City)* [1997] A.J. No. 921, expands upon the meaning of the phrase "for the benefit of the general public" and states, in part, that "the plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any other for the exemption to apply". Given this Court decision, the term general public is not necessarily limited to the flying public. Further, the air transportation system is available to the general public whether they choose to use it or not.

Third, the Board reviewed sections 4(1) and (2) of COPTER, which provides guidance in that the property is not exempt unless it is primarily used for the purpose described at least 60% of

the time that the property is in use. The Complainant's evidence is that the subject property is used to provide air navigational services 100% of the time and this evidence was not contradicted by the Respondent.

Fourth, the Board reviewed section 5 of COPTER which deals with holding property. The Board is satisfied that the property is held by Nav Canada by virtue of a lease. No evidence to the contrary was presented by the Respondent.

Fifth, the Board reviewed section 6 of COPTER which provides for a non-profit organization. The Complainant submitted that Nav Canada is a non-profit organization and this status was not challenged by the Respondent. The Complainant also submitted that Nav Canada is prohibited from distributing income because it is a non-share capital corporation that operates on a break even basis. In the absence of evidence to the contrary, the Board is satisfied that the subject property meets the requirements of this section.

Sixth, the Board reviewed section 7 of COPTER which deals with the meaning of restricted. The board finds that sections 7(1) and (2) do not apply in this case because public access is not being restricted for any of the reasons set out in these two sections. The Respondent's concern that the Control Tower has a security barrier and that no public can access this site relates to section 7(3), which states that not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted. The Board finds that the security barrier is necessary to prevent unauthorized persons from entering the property and interfering with the operation of the air navigation system. Nav Canada's operational mandate is to provide a safe, secure air navigation system, and this operation could be compromised if members of the public can access the site. The general public benefits from the services provided by Nav Canada at this site without the need to enter the property. In conclusion, the Board finds that Nav Canada meets the requirements of section 7(3) of COPTER.

Seventh, the Board reviewed sections 10(1)(a) and (b) of COPTER, which provides for the exemption under section 362(1)(n)(iii) of the Act. The Respondent submitted that the use to which Nav Canada uses the subject property cannot be characterized as a charitable or benevolent purpose as intended by the legislators. The Board agrees with the Respondent to this extent only; Nav Canada does not have as its purpose the relief of poverty, the advancement of education, or the advancement of religion. However, the entire definition for "charitable and benevolent purpose" must be read, and it includes not only the relief of poverty, the advancement of education, and the advancement of religion but also the words "or any other purpose beneficial to the community". The Board finds, as stated earlier in this decision that the subject property fulfils the requirement: any other purpose beneficial to the community.

Finally, the Board disagrees with the Respondent's contention that if the legislators had intended for Nav Canada to be exempt, the legislators would have provided for this in the statute. It is not necessary nor is it practical to list every organization in the *Municipal Government Act* or the *Community Organization Property Tax Exemption Regulation* for an organization to qualify for a property tax exemption.

The subject organization, Nav Canada, meets the requirements for exemption under s.362(1)(n)(iii) of the MGA and COPTER, and accordingly the subject property is exempt from taxation.

Conclusion:

The decision of the Board is to reduce the property assessment to \$7,787,000 (land \$3,371,630 and improvement \$4,415,528), and render Nav Canada exempt from taxation.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF DECEMBER 2010.



L. Lundgren
Presiding Officer

APPENDIX A

Municipal Government Act

362(1) The following are exempt from taxation under this Division:

- (a) any interest held by the Crown in right of Alberta or Canada in property;
 - (n) property that is
 - (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,
- 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;

Community Organization Property Tax Exemption Regulation**Interpretation**

1(1) In this Regulation,

- (b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;
- (c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;

Part 1
General Rules

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.

Holding property

5 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, a society as defined in the *Agricultural Societies Act* or a community association for the property to be exempt from taxation, the property is not exempt unless

- (a) the organization, society or association is the owner of the property and the property is not subject to a lease, licence or permit, or
- (b) the organization, society or association holds the property under a lease, licence or permit.

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 or community association 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.

Meaning of restricted

7(3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.

Part 2**Qualifications for Exemptions Under Section 362(1)(n)(ii) to (v)****Exemption under Section 362(1)(n)(iii) of the Act**

10(1) Property referred to in section 362(i)(n)(iii) of the Act is not exempt from taxation unless

- (a) the charitable or benevolent purpose for which the property is primarily used is a purpose that benefits the general public in the municipality in which the property is located, and
- (b) the resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent purpose for which the property is used.

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.*