

**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:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

J. Gilmour, PRESIDING OFFICER

T. Usselman, MEMBER

Y. Nesry, MEMBER

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

ROLL NUMBER:	068134204
LOCATION ADDRESS:	330 12 Av SW
HEARING NUMBER:	59756
ASSESSMENT:	\$ 2,250,000

This complaint was heard on the 22nd day of November, 2010 at the office of the Assessment Review Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *G. Worsley*
- *R. Brazzell*
- *B.G.T. van Helden*

Appeared on behalf of the Respondent:

- *D. Mccord*
- *A. Mathai*
- *C. Fox*

I. Overview:

The subject property is a Masonic Temple located in the Beltline area of Calgary. The Complainant submits that the subject property should be exempt from property tax because it is a non-profit organization which performs community service. The Respondent on the basis of a number of grounds determined that the legislative restrictions prohibit the subject property from being granted a property tax exemption. The parties also disagreed on the assessed value for the subject property.

II. BACKGROUND

The Complainant is a non-profit organization that operates from the subject property. The Masonic Temple, located on the subject property, was built in 1928. The subject parcel measures 10,488 SF and the Temple measures 16,171 SF. The building contains meeting halls and a library. The Complainant rents the halls within the subject property to various organizations on an hourly or daily rental basis. Although the halls are rented 88 percent of the time, the halls are operated at a loss.

The Complainant completed a 2010 Application for Property and Business Tax Exemption form. The Complainant lists the primary use of the premises as benevolence, education and enhancement of spirituality. According to the form, no one is denied access to the property on the basis of age, culture, ethnic origin or ability to pay.

Although the Respondent refused to grant a property tax exemption for the subject property in 2008 and 2009, the MGB ordered a property tax exemption for the subject property for both years.

There are a few restrictions to access the Temple. For security reasons, the Complainant has installed a security camera and to enter the building, you are required to ring a doorbell to be admitted. The library is open to the public during normal operating hours. There are no signs on the exterior of the building indicating that the subject building is open to the public.

The Complainant does earn an income on the parking lot adjacent to the Temple. The Complainant is not requesting an exemption on that portion of the property.

III. Legislation

Municipal Government Act

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;

Community Organization Property Tax Exemption Regulation AR 281/98

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;*

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.

7(1) *In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on*

- (a) race, culture, ethnic origin or religious belief,*
- (b) the ownership of property,*
- (c) the requirement to pay fees of any kind, other than minor entrance or service fees, or*
- (d) the requirement to become a member of an organization.*

(2) *The requirement to become a member of an organization does not make the use of the property restricted so long as*

- (a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and*
- (b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.*

(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.*

10(1) *Property referred to in section 362(1)(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.*

(2) *Property is not exempt from taxation under section 362(1)(n)(iii) of the Act if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.*

14 *This Part describes property that is exempt from taxation under section 362(1)(n) of the Act that is not exempt under section 362(1)(n)(i) to (v) of the Act.*

15 *A non-profit organization that holds property on which any of the following facilities are operated may apply to the municipality within whose area the property is located for an exemption from taxation:*

- (a) a facility used for sports or recreation to the extent that the facility is not used in the operation of a professional sports franchise;*
- (b) a facility used for fairs or exhibitions, including agricultural exhibitions;*
- (c) a facility used for the arts or a museum;*
- (d) a program premises as defined in the Child Care Licensing Regulation (AR 143/2008);*
- (e) a facility used by a linguistic organization if*
 - (i) the use of the property by the general public is actively encouraged, and*
 - (ii) a sign is prominently posted in the facility indicating the hours that the whole or part of the facility is accessible to the public;*
- (f) a facility used by an ethno-cultural association for sports, recreation or education or for charitable or other benevolent purposes if*
 - (i) the use of the property by the general public is actively encouraged, and*
 - (ii) a sign is prominently posted in the facility indicating the hours that the whole or part of the facility is accessible to the public;*
- (g) a facility in a municipality operated and used by an organization for a charitable or benevolent purpose where the majority of the organization's beneficiaries do not reside in the municipality;*
- (h) a facility used as a thrift shop;*
 - (i) a facility used as a sheltered workshop;*
 - (j) a facility operated and used by a chamber of commerce;*
- (k) a facility used for a charitable or benevolent purpose that is for the benefit of the general public if*
 - (i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public in the municipality in which the facility is located, and*
 - (ii) the resources of the non-profit organization that holds the facility are devoted chiefly to the charitable or benevolent purpose for which the facility is used.*

16(1) *A municipality must grant a non-profit organization an exemption from taxation in a taxation year in respect of property referred to in section 15 that is held by the organization if*

- (a) the non-profit organization makes an application for an exemption to the municipality by September 30 of the year preceding the taxation year and supplies the municipality with the following by November 30 of the year preceding the taxation year:*
 - (i) any information the municipality requires to determine if the organization meets the conditions for the exemption, and*
 - (ii) a description of any retail commercial areas in the facility,*
 - (b) the facility on the property is one of the facilities described in section 15 and the non-profit organization operates the facility on a non-profit basis,*
 - (c) the funds of the non-profit organization are chiefly used for the purposes of the organization and not for the benefit of the organization's directors and employees,*
 - (d) the property is not disqualified by virtue of subsection (2) or (3), and*
 - (e) the requirements of subsections (4) and (5), if applicable, are met.*
- (2) Property referred to in section 15(a), (b), (c), (e), (f), (j) or (k) is not exempt from taxation if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.*
- (3) Property referred to in section 15(d) or (g) to (i) is not exempt from taxation if an individual is not permitted to use the property because of the individual's race, culture, ethnic origin or religious belief.*
- (4) Before granting an exemption under this section in respect of a property that is held by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that*
- (a) the organization will provide the municipality with a report by a time and in a manner specified in the agreement that sets out the information the municipality requires to determine if the organization met the conditions for the exemption during the taxation year, and*
 - (b) if the organization does not comply with the provisions referred to in clause (a), the organization will pay the municipality an amount equivalent to the property taxes that would be payable in respect of the property for the taxation year if the property was not exempt.*
- (5) Before granting an exemption under this section in respect of a property that is owned by a non-profit organization, the municipality may require that an agreement between the organization and the municipality be in force that sets out that*
- (a) no disposition of the property may be made without the approval of the municipality, and*
 - (b) if the organization is being wound-up and dissolved, the organization must, if required by the municipality, transfer the property to the municipality.*

(6) If a municipality grants an exemption to a non-profit organization and later determines that the organization did not meet the conditions that applied to the organization for the exemption for all or part of the taxation year, the municipality may in the taxation year cancel the exemption for all or part of the taxation year, as the case may be, and require the organization to pay property tax in respect of the property for the period that the exemption is cancelled.

IV. Issues:

1. Is the subject property eligible for an exemption under the legislation?
2. What is the correct valuation to apply to the property?

V. Argument by the Parties:

The City did not at the earlier 2010 MGB hearing (MGB Order 095/10) object to the list of organizations using the hall of the Complainant. In this hearing, the Respondent could only identify one organization as a possible non-profit, and for this reason is disputing the eligibility for an exemption by the Complainant.

The Respondent argued before the Board that the Complainant has filed no evidence to demonstrate that the 19 organizations renting the halls are non-profit organizations as required by the legislation or the amount of time each organization rented the halls in 2009 and 2010, in order to comply with section 10(2) of COPTER.

I. Exemption – ISSUE 1.

The Respondent before the Board submitted a number of arguments why the Complainant should not be granted exemption status for its subject property. These reasons can be summarized as follows:

1. The Respondent submits the conclusion of the MGB Order 095/10 was based on evidence not supported by a rigorous review of the Complainant's operations on the property;
2. The property's use is not primarily a charitable or benevolent purpose for the benefit of the public at large and that the property is not open and accessible to the general public as required under the MGA;
3. The MGB erred in law in finding under COPTER section 7(2) did not apply to the Complainant.
4. That there is insufficient factual evidence to support any significant charitable or benevolent use of the property under MGA section 362(l)(n)(iii)(b) on the following grounds:
 - a) the Complainant's organizational activities being principally that of a private club and therefore not a property use purely for the purpose that is charitable or benevolent benefitting the general public,
 - b) insufficient evidence that the Complainant undertakes substantial charitable or benevolent works that benefit Calgarians;

- c) the absence of evidence that the external organizations submitted by the Complainant using the property are duly registered non-profits and are sufficiently representative of the Calgary non-profit community to qualify as a charitable or benevolent use of the property; and
- d) the absence of evidence that the Complainant actively promotes the use of its property by non-Freemason members of the general public.

There were other grounds in defence raised by the Respondent, but the above grounds were the primary arguments submitted to the Board by the Respondent.

The Department of Municipal Affairs released a guide entitled "Property Tax Exemptions In Alberta – A Guide". This guide provides organizations with information about property tax exemptions which are available. Free Masons are specifically named in this document that would be given a property tax exemption on the grounds that the organization is a non-profit organization doing community work.

In its financial statements the Complainant should have a deficit of \$58,202 for the year 2008 (Exhibit C-1 Page 63). For the year 2007, the Complainant also noted in its financial statements that it provided scholarships and donations of \$55,353 (Exhibit C-1 Page 113 Line 8).

Part of the work undertaken by the Complainant is to provide a space in which other non-profit organizations can meet. Although the premises is occupied 88 percent of the time – 65 percent of the time by other non-profit organizations that are not Masonic order and 23 percent of the time by a Masonic order.

In 2008/2009, the halls were rented by the following organizations: (Exhibit C-1 Page 81)

- New Alta
- Healing Group
- Metaphysical Society
- Les Young (Birthday party)
- Spiritual Healing
- Kappa Sigma Tau (U of C)
- Dean Cristie Spiritual Well-being
- Robert Garres (Business meetings)
- Latino World Dancers
- Grand Guidance
- Thomas Muir Healing
- Core Potential Healing
- Central District meeting
- Soul Journey
- Variety of Canada
- Barry (Business meeting)
- Goulting (Business meeting)
- Wedding Banquet
- Colleen D (Business meeting)

Groups wishing to use the halls in the subject property rent the space on a daily or hourly basis.

VI. Findings:

Upon hearing and considering the representations and the evidence of the parties, and having read and considered the documents submitted in evidence, the Board has determined:

1. Although there are no public signs outside the subject property, there are no restrictions to prohibit public users from using the premises. For security reasons, the owner of the building

has installed a security camera and a person is required to press a buzzer to enter the building;

2. There is no issue that the owner of the building is a service club that would be given a property tax exemption under the provincial Guide.

3. On the basis of the evidence produced by the Complainant, he does make charitable donations and scholarships to the public;

4. On the basis of the nineteen organizations using the halls of the facility for the year 2008/2009, it is not clear to the Board whether these organizations are non-profit or not. There is no evidence produced by the Complainant concerning the amount of time utilized by each organization throughout the year which equates to 65 percent usage by these organizations.

The only organization recognized by the City as a non-profit was Kappa Sigma Tau from the University of Calgary.

VII. Decision:

In consideration of the above, and having regard to the relevant legislation, the Board makes the following decision with respect to the issue of exemption for the subject property:

Based on finding number 4, the subject property is not exempt from property tax for the 2010 taxation year under sections 10(1)(b) and 10(2) of COPTER.

VIII. Reasons:

The Respondent argued that under 10(2) of COPTER, they would acknowledge that all 19 organizations using the premises could be considered to be "non-profit" if they were registered as such.

Under section 10(1)(b) of COPTER, the term "charitable or benevolent" purpose is defined in section 1(1)(b) of the regulation as follows:

"means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community."

The critical section for the Board in COPTER is the requirement for the Complainant to use the space requested for exemption no more than 30 percent of the time for restricted use within the meaning of section 7 of COPTER.

For the 19 organizations listed by the Complainant on Page 81 of their evidence, the Board based on their titles had no way in determining whether they were non-profit organizations or not. In addition, the Complainant provided no evidence to the Board how much time each organization utilized the premises in the year, other than to state that such groups in total used the halls 65 percent of the time, out of a total usage of 88 percent for all the halls.

Section 6 of COPTER is the important provision of the regulation which was not complied with by the Complainant. It reads as follows:

"When section 362(l)(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 disturbing income or property to its shareholders or members during its existence.

The Complainant did not provide the Board any evidence to show the 19 organizations using the subject premises complied with sections 6 or 10(2) of COPTER.

For the above reasons, the Board denies the exemption application of the Complainant.

IX. Valuation – Issue 2

The City based its assessment of the subject property on the vacant land rate of 10,488 SF at \$215 SF for an assessment of \$2,250,000.

The Respondent provided the Board with five vacant land sales in the Beltline area of the City for the years 2008 and 2009 with a median SF rate of \$221 (Exhibit R1 Page 37).

The Complainant stated that it was impractical for the Respondent to use vacant land as the criteria for assessment since the City had classified the subject building as an “A” classification which was considered in the Historical Resources Act of the Province (Exhibit C-1 Page 172). For this reason, the Complainant argued that it was unlikely that the subject building would be approved for demolition either by the City or Province as a historical property.

Although the subject property generated very little income, the Complainant stated that the “Income Approach” should be relied upon at \$8 PSF. The Complainant relied on equity comparables for churches in the City and hotels and conference centres indicating an average rate of \$8.57 PSF.

Based on the assessment evaluation of the Complainant of \$8 PSF for the halls below grade and above grade, his requested assessment is \$1,370,000.

X. Findings

Based on the evidence provided by both parties, the Board determined that the assessment should be revised as follows:

Rental Rate	Hall Below Grade \$ 8	Hall Above Grade \$ 14
Area	4,426 S.F.	8,978 S.F.

The Board found that the City's 2010 highest and best use argument for land value was not appropriate given the building's classification under the Historical Resources Act.

The Board found that the subject should be assessed under the "Income Approach" as it had been historically assessed.

The Board utilized the parameters employed by the City for other "C" buildings with an assessed rate of \$8.00 PSF for below grade space and \$14 PSF for above grade space. The area utilized for the calculation was the uncontested leasable area submitted by the Respondent.

XI. Decision

The Board reduced the assessment of the subject property from \$2,250,000 to \$1,730,000.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF DECEMBER 2010.



J. Gilmour
Presiding Officer

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.*