

**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, Revised Statutes of Alberta 2000 (the Act).

between:

***Horizon Housing Society (as represented by Assessment Advisory Group Inc.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***P. Petry, PRESIDING OFFICER
D. Morice, BOARD MEMBER
P. Pask, BOARD MEMBER***

These are complaints 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 2012 Assessment Roll as follows:

ROLL NUMBER	ADDRESS	HEARING NUMBER	ASSESSMENT
200684371	5010 50 Street SW	66989	\$1,110,000
067138503	929 13 Avenue SW	66987	\$2,930,000
201217759	1815 28 Avenue SE	66991	\$12,050,000
083202002	3818 19 Avenue SW	66990	\$6,190,000
112033303	215 Fairview Drive SE	66992	\$13,270,000
059150847	727 14 Street NW	66988	\$3,450,000

These complaints were heard September 24, 2012 through September 27, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue N.E. Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- S. Cobb; D. Bowman and L. Fisher

Appeared on behalf of the Respondent:

- M. Jankovic and D. Satoor

Property Description and Background

The subject properties are all operated by Horizon Housing Society (HHS) whose mission is to provide appropriate accommodation within an integrated environment for people with mental health challenges or other special needs. There are six properties under complaint as listed above. Each property has a slightly different mix from a tenant need perspective. The buildings also vary with respect to the overall number of units and mix of unit types, ranging from studio units to four bedroom units which provide shared accommodation.

In all but one property the City of Calgary (City) has provided tax exemption for some units depending on the occupant's disability. In these complaints the complainant seeks to have the Composite Assessment Review Board (CARB) extend tax exemption status to all units not currently exempted except those units where there is no subsidy of rent through HHS. This exception was brought forward by the Complainant toward the conclusion of the hearing of these matters.

The HHS employs one and in some cases two staff members to handle maintenance, administrative matters and tenant complainants at each facility. These staff members are required to live on site and to be available 24 hours per day and 7 days per week. The Complainant also seeks to have the CARB rule that the units occupied by these staff members be determined as exempt as well.

The units which are the subject of these complaints will be referred to as the “**subject units**” throughout this decision.

Issues:

- [1] What is the legislative framework that is relevant to the determination of whether or not the subject units should be granted tax exemption?
- [2] What are the relevant tests, qualifications or conditions which flow from the legislation and must be met in this case?
- [3] Do all or any of the subject units meet the appropriate tests, qualifications and conditions? This question must be answered for each of the properties under complaint.

[4] Is there any form of inequity between the units currently exempted and those which are the subject of these complaints?

Summary of the Party's Positions

[5] Both parties indicated that they have one general set of evidence and arguments which are intended to address the primary or overarching issues for all six complaints before the CARB. This would then be followed by some specific evidence related to each of the properties under complaint. The Complainant choose to use a facility known as the Bob Ward Residence, roll number 200684371 at 5010 50th Street SW, to introduce its primary evidence and argument.

Complainant's Position

[6] The Complainant referred the CARB to the HHS Annual Report for 2011 – 2012 year ending March 31, 2012. This document shows that HHS owns and operates 589 residential units of housing and that the average rental rate paid by occupants of these units is \$452 per month. Over the past year 106 new tenants have been placed with the following range of needs.

Experiencing Homelessness	7%
At Risk of Homelessness	33%
Low Income Families	16%
Low Income Seniors	6%
Mental Illness	30%
Brain Injuries	4%
Physical Disability	4%

[7] This Annual Report shows that the HHS has been functioning for some 36 years and the Complainant suggested that it has had partial exemption for all of that time. A witness for the Complainant, Ms. Fisher, who has worked with HHS for the past 16 years, indicated that there have been ongoing exemptions for certain units depending on the disability of the occupant for all the years of her employment with HHS. Current exemptions are for those units that are available to the mentally ill and those with brain injury. The Complainant suggested that the reason HHS rents a few spaces to non-subsidized tenants is to create a mix that dilutes the stigma that attaches to any building that is solely for one type of disability or need, for example the mentally ill.

[8] The Report provides some insight with respect to each property under complaint and further reference will be made to the report when the specifics of each facility are discussed later in this decision.

[9] The Complainant brought forward documentation to show that the HHS is registered under The Societies Act of the Province of Alberta and therefore meets the basic requirement under the Community Organization Property Tax Exemption Regulation (COPTER). The Respondent indicated that this point is not in dispute.

[10] The Complainant referred the CARB to Article 1.2 of the HHS bylaws which sets out the

objects of the Society as follows:

- (a) "To purchase, lease, build or otherwise acquire and operate lands and operate lands and buildings for the charitable purposes of:
 - (i) provide residential housing accommodation for handicapped, poor or low income citizens of Alberta; and
 - (ii) assist in the integrating such individuals into the community in which they live;
- (b) to engage in any other ancillary or incidental activity which enables it to raise funds to be utilized exclusively in carrying out its charitable objects;
- (c) The operations of the Society are to be chiefly carried on in Calgary, Alberta."

[11] The Complainant pointed out that article 8.9, titled, Resolution to Dissolve, provides as follows:

"In the event of liquidation or dissolution of the Society no disbursement shall be paid to Members of the Society and all assets remaining after payment and satisfaction of all liabilities and debts will be distributed and paid over to another recognized non-profit charitable Society having like or similar objects in the Province of Alberta."

[12] The Complainant argued that these objects show that HHS is exclusively dedicated to the charitable provision of housing for those who would otherwise be without and many would be on the street or back on the street, if it were not for HHS. The Complainant believes that the citizens of Calgary, given the aims and operations of HHS, would overwhelmingly judge the results and benefits provided by HHS to be charitable and benevolent and would support tax exempt status for the subject units.

[13] The Complainant argued that all three levels of Government are actively involved in supporting HHS through formal agreements in line with the objects of HHS. The Complainant also presented a list of 78 corporations and other organizations which donate funds in support of HHS and their work. In spite of this the City still wishes to levy taxes on many of the units occupied by those disadvantaged and in need of subsidized accommodation.

[14] The City agrees that HHS is a non-profit society and is exempt as far as its head office space is concerned and the City has also exempted the rental units occupied by those with mental illness and brain injury. There is no difference with respect to needs of those occupying units where exemption has not been granted, that is the physically disabled and those with low income. Most of the tenants in these facilities receive income towards their rent from provincial and federal income support programs or from other non-profit organizations. The Complainant argued that the City of Calgary would like to claim property taxes on property funded by the provincial and federal governments as well as the City itself as in two of the properties under complaint the City has provided the land at practically no cost to HHS. This makes no sense. HHS strives to be self-sustaining and in 2011-2012 91.5% of the required operating funds came from rents and donations while 8.5% only came from government subsidies.

[15] The Complainant also takes the position that the units occupied by HHS staff should be exempt as well. These individuals must be on call 24/7 and while there is general office space available during the day, the staff would be using their own units for work after hours.

[16] As referred to earlier the Complainant is no longer requesting exemption for those units that are not subsidized even though the rents paid are considerably below the Canada Mortgage and Housing Corporation (CMHC) market rent levels.

[17] The Complainant demonstrated that rents are below CMHC market levels and below the maximum rents set by HHS. The average rent for each facility ranges from \$423 to \$553 per month and the overall average across the inventory of HHS rental units was \$452 per month for 2011 – 2012. It is argued therefore that each of the HHS tenants including those occupying non-subsidized units receive a substantial gift every month because of the significantly reduced rents they pay.

[18] The Complainant referred the CARB to the legislative provisions for property used for charitable or benevolent purposes and argued that the subject units fall squarely within 362 (n) (iii) (B) of the Municipal Government Act (Act) and the definition of “charitable and benevolent purpose” provided in section 1(1)(b) of the Community Organization Property Tax Exemption Regulation (COPTER). This definition reads as follows:

“charitable and benevolent purpose” means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;”

[19] The Complainant argued that HHS relieves poverty by providing accommodation for those in need who cannot afford rents even close to rents at market levels in the City of Calgary. The tenants are all low income people with disabilities, at risk of homelessness or those who would be on the streets without the support through HHS. Tenants are referred to HHS by other agencies dealing with individuals with special needs. HHS makes it possible for these members of the community to obtain accommodation where they could not do so without the support of HHS and the other partnering agencies. This then is the benefit to this segment of the community and to the community in general.

[20] Section 10 (1) of COPTER provides that the property is not exempt from taxation under 362(1)(n)(iii) unless:

“(a) the charitable and 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.”

[21] The Complainant argued that HHS meets both of these requirements. It was argued that the City is attempting to apply section 7(1) (c) of COPTER which does not apply to HHS. This provision sets out restrictions to exemption and subsection (c) reads;

“the requirement to pay fees of any kind, other than minor entrance or service fees, or”

[22] The Complainant argues that HHS accommodation is available to anyone in need referred to them and there is no fee whatsoever to access these benefits. Fees are not rents and COPTER does not refer to rent as a restrictive bar. In fact the provisions in COPTER section 11 respecting senior citizens, anticipates subsidized rent. “Subsidized accommodation” is also defined and that definition fits the model of subsidy provided by HHS.

[23] The Complainant provided two Municipal Government Board (MGB) decisions and a number of other documents which it references in support of its arguments.

[24] Based on the foregoing the Complainants adjusted requests are as follows:

The Property Name and Roll number	Subject Units to be Exempted	Remaining Taxable Assessment
Bob Ward Residence Roll 200684371	5 physically Disabled, 3 low income and 1 staff unit	\$000
Horizon Park Roll 067138503	4 physically disabled, 14 low income and 1 staff unit	\$000
Alice Bissett Place Roll 201217759	12 physically disabled, 60 low income and 1 staff unit	\$000
Horizon West Roll 083202002	4 physically disabled, 60 low income, and 2 staff units	\$3,210,000
Heritage Gardens Roll 112033303	88 low income, and 2 staff units	\$770,000
Horizon 14 059150847	5 physically disabled, 15 low income and 1 staff unit	\$1,500,000

[25] In the above table the remaining taxable values represent the value of unit which are non-subsidized and in the case of Horizon 14 the value also includes \$207,000 associated with commercial space.

Respondent's Position

[26] The Respondent stated that while exemption provisions are set out in the Act and COPTER the municipality administers and decides on exemptions to be granted. The City takes this matter very seriously as when a exemption is granted the tax burden then shifts to the remaining taxpaying public. The City decision process follows the general flow that has been set out by the "Property Tax Exemptions in Alberta Guide that was released in 2005. The Respondent set out the primary legislative provisions as follows:

[27] 362 (1)(n)(iii)(B) of the ACT

These provisions of the Act allows for consideration of exemption for property held by a non-profit organization and used for charitable or benevolent purposes.

1 (1) (b) and (c) of COPTER

Subsection (a) provides the definition of "charitable or benevolent purpose" and subsection (c) provides the definition of "general public"

Section 3 of COPTER

This provision allows for exemption of a part of the property that may qualify under 362(1)(n)(i) to (v) of the Act or Part 3 of the regulation.

4 (1) of COPTER

This provision requires that in the case of a property exemption under 362 (1)(n) or Part 3 of the regulation the primary use or 60% of the time the property is in use it must be used for the purpose described in those provisions.

7 (1) (C) of COPTER

To qualify for exemption the property must not be restricted within the meaning of section 7 for more than 30% of the time the property is in use. Subsection (c) provides that the requirement to pay fees of any kind, other than minor entrance or service fees is such a restriction.

10 (1) of COPTER

This section of COPTER sets out that an exemption under 362 (1)(n)(iii) cannot occur unless the charitable or benevolent purpose benefits the general public in the municipality and the resources of the non-profit organization are devoted chiefly to the charitable or benevolent purpose for which the property is used. This section of COPTER also triggers the tests for restrictions under section 7.

[28] The Respondent referring to section 10 of COPTER, argued that there are two tests set out in the regulation that a property must meet in order to qualify for the type of exemption sought by the Complainant. First the use of the property must be devoted to a charitable or benevolent purpose and second, the purpose for which it is used must benefit the general public. The Respondent stated that charitable organizations are distinguishable from non-profit organizations as the charitable organization will provide a significant amount of service at no charge or at a significant subsidy to their clients, that is a gift, and they are directed towards a charitable purpose.

[29] The Respondent referred the CARB to Markham:Butterworths and "The Law of Charitable and Not For Profit Organizations" section authored by Donald Bourgeois. It is stated that the accepted definition of "charity" is "a gift" to the general public use. The Respondent referenced an enactment by Queen Elisabeth I dating back to 1601 and a case; *Commissioners for Special Purposes of Income Tax v. Pemsel (1981)*. The same four aspects are the same as the four listed in the definition of charitable or benevolent purpose in COPTER 1(1)(b). The Respondent in its analysis goes on to cite a number of other court decisions supporting the notion that charity is a gift with altruistic motivation. *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R* was suggested as an important case on this point. The Respondent acknowledges that there is a lack of case law in the Canadian context dealing with affordable housing and therefore the CARB should be guided by the English courts that have found affordable housing not to be a charitable endeavour.

[30] In this case the properties are used for private residential purposes and not for the benefit of the general public therefore the requirements under 362(1)(n)(iii) of the Act are not met. The rents charged offset the costs to operate the facilities and therefore there is no charitable gift provided. For these same reasons the Respondent indicated that the subject properties do not meet the requirements of COPTER section 10(1)(b). This requirement is that

the resources of the non-profit organization be chiefly devoted to the charitable or benevolent purpose for which the property is used.

[31] The Respondent stated that the CARB should also consider how the subject properties compete in the market place. Charitable organizations which benefit from tax exemption should not compete unfairly with commercial entities in the market place that are subject to property tax. The Respondent argued that the rents paid by some of the tenants of HHS are approaching market levels and do not include additional services, therefore cannot be considered to be used for charitable or benevolent purposes.

[32] The Respondent also provided a number of other cases and made reference to certain aspects of these cases which it believed to be in support of its position.

[33] The Respondent argued that the individual is the primary beneficiary of the operations of HHS and there is no direct gift as the rents are charged for the unit provided. The Complainant has not shown how the beneficiaries are selected nor has it proven they are in need in a charitable sense. Section 10 (2) of COPTER provides that a property is not exempt if it is restricted within the meaning of section 7. Section 7 (c) sets out that a requirement to pay fees of any kind other than minor entrance or service fees is a restriction which is a bar to exemption. The tenants of the HHS properties under complaint are required to pay significant rents and even though most may be below market, these rents are significant and do not fall under the concept of a minor entrance or service fee. In support of its contention in this regard, the Respondent referred to MGB Order: MGB 090/08. The exemption appeal in this case related to a seniors care facility. The residents of this facility were required to pay rent. The MGB found in that case that the rents paid by the residents did not constitute a minor fee even with the understanding that a portion of the rent covered designated care services. The MGB found that the rent charged in that instance constitutes a restriction within the meaning of fees under COPTER and therefore 362(1)(n)(iii) of the Act cannot apply. The Respondent argued that the CARB must reach a similar conclusion in the case before it.

[34] The Respondent having had recent discussions with the Complainant respecting the tenants of the properties under complaint now states that none of the units meet the criteria for exemption and the City is in error for having granted exemption for certain units in 2012. The Respondent therefore warned the CARB that it should not compound the error by granting further exemptions. The City apparently believed that those occupants with mental illness and brain injury were receiving considerable personal services and that a good portion of the rent charges were to support such services. It was on this basis that the current exemptions were granted.

[35] In summation the City states; *"To put it simply, in Calgary, the Government Of Alberta determines what should be exempt and the City of Calgary determines what is exempt. Whether the properties under complaint should be exempt is a question to be determined at the political level, and not a decision for the Board or City of Calgary Administration."*

[36] The Respondent asserts that while it is clear that HHS is providing housing, it is also clear that the housing is being provided in return for rent and the organization recovers its costs from these rents. Even though the rents are below market there is no altruistic or gift component to the housing being provided, thus the use of the property is not charitable or benevolent as defined in the Act. The Respondent referred to a Local Assessment review Board decision respecting Habitat for Humanity properties in support of its position in this respect.

[37] The Respondent argued that 362(1)(n)(iv) and section 11 of COPTER should be considered in contrast to the provisions for charitable or benevolent purpose. It is clear that the legislation intended to exempt specific seniors lodge accommodation without reference to the

restrictions under section 7 of COPTER. If the legislators had intended that subsidized accommodation would fall under 362(1)(n)(iii) then the section dealing with seniors' accommodation would be superfluous.

[38] The Respondent states that the law is clear, the facts are not in dispute and the properties under complaint are not exempt from taxation thus the assessments must be confirmed.

Findings and Reasons for the Board's Decision:

Issue 1 and 2) The Legislative Framework and Relevant Tests or Conditions

[39] The CARB will first review the relevant legislation and determine what tests, conditions or qualifications must be met in order to gain tax exemption status under the current law.

The 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,*

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; "

The first relevant test for the subject units arises in 362(1)(n)(iii) above is the property must be used for charitable or benevolent purposes. Charitable and benevolent purpose is defined under section 1(1)(b) as follows:

1(1) In this Regulation,

(a) "Act" means the Municipal Government Act;

(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;

The advancement of education or religion do not apply in this case.

Therefore In order to qualify for tax exemption the properties or subject units in this case must be used toward the relief of poverty and/or for any other purpose beneficial to the community.

[40] The Complainant argues that the operations, purpose and objects of HHS meet both of these qualifications. The subject units are made available to those in the community who are in most need. They are the mentally disabled, the brain injured, the physically disabled and those with incomes well below that required to pay market rent. All of the tenants of the subject HHS units, no matter whether they are disabled or not, are financially impoverished and require the HHS accommodation at a cost well below market. This is the single focus of the HHS and the accommodation provided is directly aimed at the relief of poverty. All tenants must be in financial need whether they are disabled or not. If for some reason the CARB is found not to have determined "poverty" from the correct standpoint the purpose and use of the subject units still meet the second criterion that is "for any other purpose beneficial to the community".

[41] The Respondent argued that charitable or benevolent purpose must be altruistic and result in a gift without consideration in return. The units made available to the tenants in this case are not a gift as there are significant rental charges involved, some approaching market values. The Respondent argued that there is no service being provided and therefore there is no charitable or benevolent purpose being fulfilled.

[42] The CARB considered this question from the perspective of what benefit is being delivered and to whom is it being delivered. The objects of HHS are very clear and specifically focused on the handicapped and/or poor. All the organization's effort appears to be directed toward achieving this purpose. The tenants are required to pay 30% of their income as rent or to pay a minimum rent established by HHS. The evidence is that the average rent across the entire HHS inventory of some 589 units is only \$452 per month. This value would be reflective of 30% of the average income for the HHS tenants. The average total gross income for HHS tenants would therefore only be \$1,506.65 per month. While the CARB did not have evidence to show what level of income is considered to be at the poverty level, the CARB nevertheless believes that an income of some \$1,500 per month is well below what would be required to live in the City of Calgary without support. The average HHS rent of \$452 per month charged to its tenants is under 50% of the average market rent of \$924 per month for one bedroom apartments according to the unrefuted HHS. The Respondent average of typical rents relevant to the six properties under complaint is \$864 per month or \$412 per month above the actual average rent charged by HHS.

[43] The CARB finds that the Respondent is wrongly focused on the rent being charged to the HHS tenants whereby it concludes there is no benefit or gift. The focus should rather be on the significant benefit reflected in the large gap or discount between the rent paid by HHS tenants and what would otherwise be the case if they were subject to the vagaries of market place rents. These discounts to the tenants are based on their ability to pay but the value of such discounted rents appears on average to be in the order of \$412 per month or approximately \$5,000 per year. This in anyone's estimation is a gift and would be viewed as a very worthwhile charitable and benevolent purpose, given the inability to earn income or the poor financial status of the recipients.

[44] The HHS annual report lists 78 corporate and organizational donors that are actively supporting the objects and operations of HHS. This level of corporate and community support is a significant testimony to the charitable or benevolent purpose served by the discounted

accommodations made available to those who are unable to manage on their own.

[45] The CARB therefore concludes that the many of the subject units do in fact meet one or both of the relevant aspects of charitable or benevolent purpose as intended by the legislation. That is the relief of poverty or for any other purpose beneficial to the community. Those units not meeting a charitable or benevolent purpose will be discussed later in this decision.

[46] 362(1)(n)(iii) also requires that the purpose is to be for the benefit of the general public. This term is also defined in COPTER section 1(1) (c) as follows:

(c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;"

[47] The Complainant argued that the benefits provided through subsidized accommodation by HHS are directed to a needy and significant segment of the community. This segment of the community has already been determined by the Respondent to meet the requirement of "general public" in that the Respondent has granted exemption to two subsets of the tenants accommodated by HHS.

[48] The Respondent now takes the position that as there are no services other than reduced rents provided, the beneficiaries of the operations of HHS are individuals and there is no proof of need in any charitable sense.

[49] The CARB has considered the evidence and decisions of the courts and other review boards. It is clear that these decisions have narrowed the concept of "general public" to segments of the community for which the benefit is designed to help. In MGB 090/08 the Board had this to say:

"The MGB finds that Vista Village does provide a benefit to the community in the same way that a homeless shelter, children's school or food bank is beneficial. To be of benefit to the community does not require each member of a local community to be served equally. Individuals within a community have different needs and the community is best served by recognizing those differences and providing an equitable share of resources as needed."

The CARB adopts a very similar view with respect to beneficiaries of the accommodation made available by HHS. This segment of the general public is significant and the HHS benefits are made available to anyone referred to them who are in need of subsidized accommodation

[50] An opposite decision was reached by the review board dealing with the Habitat for Humanity case. The facts of that case, however are very different and apparently home ownership is one of the objects. The CARB gave no weight to this decision.

[51] Another condition set out in 362(1)(n)(iii)(B) is that the property must be owned by a non-profit organization. This is the case respecting the properties under complaint and there was no dispute on this requirement being met.

[52] 362(1)(n) also requires that the property being considered for exemption must meet the requirement set out in the regulations.

Community Organization Property Tax Exemption Regulations (COPTER)

[53] The relevant aspects of section 1 of COPTER have been dealt with above. Section 3 is pertinent as it provides that an exemption may apply to only a portion of a property. At one point

the Complainant took the position that if in large part a property qualified for exemption then the entire property should be deemed to be exempt. The request of the Complainant has changed and this provision is no longer a point of dispute in this case.

[54] Section 4 of COPTER sets out requirement concerning primary use as shown below.

“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”.

In the case of the subject units they are in use on a continuous basis apart from when there is tenant turnover. The CARB has decided that many of the subject units do in fact meet one or both of the relevant aspects of charitable or benevolent purpose as intended by the legislation. The purpose and use of the qualifying units is continual and therefore the provisions of both 4(1) and (2) above are met by all but a few units which will be identified later in this decision.

[55] Section 10 of COPTER provides that properties referred to in 362(1)(n)(iii) of the Act are not exempt from taxation unless certain conditions are met. Section 10 reads as follows:

“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.”

[56] The test or condition set out in section 10(1)(a) is that the primary use must be a purpose that benefits the general public in the municipality. This requirement is very similar to the requirement set out at 362(1)(n)(iii) which has already been addressed above. Here the general public is shown to be that within the relevant municipality. The CARB previous conclusions address this requirement within the local community and therefore enough said on that point. The Respondent argues that the beneficiary is the individual and not the community

and that the rent is not for services and that the rents cover the operating costs, therefore there is no gift.

[57] The CARB is not sure why the Respondent places such importance on the question of services as this seems to have little basis as a condition or qualifying consideration under the provisions of either the Act or COPTER. The important concept is that the property in question *must be used with the purpose to benefit*. The word benefit is not synonymous with the word service. In the Respondent's explanation as to why it now believes none of the HHS properties under complaint qualify for tax exemption it argued that HHS does not provide any significant personal care services to its tenants. In defence of the current exemptions granted to units occupied by the mentally ill and brain injured, the Respondent indicated that this is in error as it has just recently learned that no significant service is being provided. Therefore these exemptions are still in place. The Respondent stated it had previously believed such services were in place and that the rents paid also covered such services.

[58] The CARB concludes that the Respondent's view as expressed above is not founded in the relevant legislative framework and finds no error in the tax exemptions granted for 2012. The question before the CARB is did the Respondent go far enough and are there other units that also may qualify for tax exempt status?

[59] Section 10(b) that the resources of the non-profit organization holding the property be chiefly devoted to the charitable and benevolent purpose for which the property is used. In this case as has been indicated earlier, the single focus of HHS is to provide accommodation for those who are handicapped or poor or both. All of the resources available to HHS go toward its primary objects which are;

- *providing residential housing accommodation for handicapped, poor or low income citizens of Alberta; and*
- *assisting in the integrating such individuals into the community in which they live;*

[60] All but a small minority of the subject units meet this condition and these will be addressed later.

[61] Section 10(2) sets out a bar to tax exemption if the use of the property is restricted within the meaning of section 7 of COPTER for more than 30% of the time the property is in use. Section 7 is provided below;

“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."

[62] Section 7(1)(c) is argued by the Respondent to be applicable to the subjects and is a relevant test for all properties which may qualify for tax exemption under 363(1)(n)(iii) of the Act. This subsection bars tax exemption where there is a requirement to pay fees of any kind, other than minor entrance or service fees.

[63] The Complainant argues that this provision does not apply to the subject units as there is no service or entrance fee charged by HHS to tenants or potential tenants. Any individual referred to HHS for subsidized accommodation is then placed within HHS facilities without any form of fee what so ever. The Complainant acknowledged that the Respondent takes the view that rents are fees as contemplated under this section of COPTER but rent is not even referred to in this section. Subsidized rent is defined in section 1(1)(d.1) and the HHS model fits this concept of subsidization.

[64] The Respondent argued that as there are no additional services provided by HHS to its tenants the rents are rent only and are fees as contemplated under section 7(1)(c). These rents, although they may be below market, are nevertheless significant and not of a minor nature. The subject units therefore are restricted within the meaning of section 7. The Respondent referred the CARB to MGB decision 090/08 where in the MGB concluded that rents paid in that case did not constitute a minor fee and therefore were determined to be a restriction within the meaning of section 7 of COPTER.

[65] First the decisions of the MGB are not binding on the CARB and in this case the CARB differs in its analysis and findings from those expressed in MGB090/08. This may result from different facts and a different view of the benefit being provided in the case before the CARB. Again we reiterate that the notion that the provision of certain services is an important consideration is not the view of the CARB. The more important matter is to determine what is the benefit delivered by HHS and then to determine whether or not there are fees of any kind for that benefit and payable by the individual or the segment of the community who are the beneficiaries.

[66] As stated earlier in this decision the CARB has determined that the benefit provided by HHS is not the rent payable but rather the discount from the rents that would otherwise be payable except for the charitable or benevolent purposes and operation of HHS. This benefit may vary depending on the income of the tenant but in all cases it would be substantially below the equivalent market rent. While the Respondent suggested that some rents approach market value, there is no evidence of this. The Complainant had provided to the Respondent information showing actual rents paid by the tenants of the properties under complaint and asked to have this information provided to the CARB. The Respondent objected to this information coming into evidence and therefore there may be a measure of adverse inference.

[67] In addition the Respondent has for many years also reached the conclusion that rents paid by the tenants of these facilities do not represent a restriction within the meaning of section

7(1)(c). The reason offered by the Respondent again, relates to the notion that certain services were being provided but this in the CARBs view has no basis and further the objects of HHS and its operation of the properties under complaint have not changed since inception.

[68] In any case the benefit of the reductions from market rents is substantial (on average for a one bedroom unit approximately \$400 per month) and this benefit is made available without any fee to the tenant. The CARB therefore concludes that there is no fee of any kind required from the beneficiaries for the benefit being provided.

[69] Section 7(2) dealing with membership requirements does not apply in these cases and was not in dispute.

Issue 3) Units Qualifying For Exemption

[70] The Complainant withdrew its request to have non-subsidized units exempted from taxation and therefore the CARB need not go further with respect to these units and they were not included in the units referred to throughout as the "subject units". The CARB would expect that the rents for the non-subsidized units would be higher than for the other tenants but even so the rents would not exceed the maximum rents set by HHS which are below the CMHC posted rents.

[71] The CARB has carefully considered whether or not the units occupied by HHS staff members should be exempt from taxation. These units are not subsidized. The duties of the staff members are very similar to the maintenance and administrative duties of most other apartment complexes that employ on site staff to look after the building and attend to tenant issues. The fact that the staff members are required to be available on a 24/7 basis is also not unusual or particular to the type of accommodation under complaint. The 24/7 requirement is a condition of employment, a matter between the staff member and the organization. The CARB concludes that there is no charitable or benevolent benefit provided to the occupants of these units.

[72] For all of the reasons provided above the units occupied by HHS staff members do not qualify for exemption from taxation. The CARB has used an average of the HHS maximum rents for each facility to determine an appropriate taxable value for the staff occupied units.

Issue 4) Consistency in Exemption Application Considerations

[73] The Complainant seeks an equitable application of exemption from taxation criteria. The City has through its application of the legal framework for exemption from taxation, determined that the HHS units occupied by the mentally ill and brain injured tenants qualify for tax exemption. This has been the case for many years up to and including 2012. The Complainant's position is that units occupied by the physically disabled and those who have a very low income should also qualify for exemption from taxation. The City should apply the tax exemption criteria in a consistent and equitable manner.

[74] The Respondent on the other hand argues that the none of the subject units should be tax exempt and further more the units occupied by the mentally ill and brain injured tenants have been granted exemption by the City in error. The CARB should not therefore find that the subject units should be exempt on the current erroneous tax exemptions that are in

place within the properties under complaint. The Respondent argues that the CARB should therefore; focus on the correctness questions surrounding the exemption law and not the question of consistency or equity.

- [75] There is no compelling evidence before the CARB that shows a contrast between the currently exempt set of units and the subject units which would turn back the challenge of consistency in the Respondent's application of the legislation respecting taxation exemption. Furthermore, there is no compelling evidence on which the CARB is able to conclude that the units occupied by the mentally ill and brain injured have been incorrectly granted exemption from taxation.
- [76] The Respondent stated that while it concludes that none of the HHS accommodation units within the properties subject to these complaints should be exempt from taxation, it sees no reason to discontinue the tax exemption currently in place for the head office space occupied by HHS.
- [77] The CARB finds this position to be somewhat incongruous because of the singular purpose of the objects of HHS which have been demonstrated through its operations over many years. The accommodation units owned or held by HHS are the means by which HHS delivers its charitable or benevolent benefits to the community. If the only means or mechanisms' through which HHS delivers its benefits to the community were to be determined not to qualify for exemption from taxation, why then would the office of the organization administering these benefits continue to qualify for tax exemption?
- [78] In the final analysis of this issue the CARB concludes that the City has granted exemption from taxation for units within the properties under complaint in an inconsistent manner without distinguishing reasons as to why the units occupied by the mentally ill and brain injured tenants qualify while the units occupied by the physically disabled and low income tenants do not. While the CARBs finds respecting this issue would not override our finds with respect to the correct interpretation of the legislation, the CARB finds that the resolution of such inconsistency is a secondary reason to grant the subject units exemption from taxation except for the units occupied by HHS staff members.

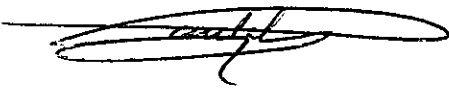
Summary

[79] The CARB has carefully considered many aspects of the legal framework and the facts of this case. The two largest questions however centred on whether the subject units were used for charitable or benevolent purpose and whether or not rents charges for these units constitute something more than a minor entrance or services fee under the meaning of section 7 of COPTER. The CARB found that the Respondent wrongly focused on the "rents payable" and "services" instead of the real charitable or benevolent benefit which is in "the significant discount from market rents" given to each tenant. The CARB also found that there is no entrance or service fee paid by tenants in order for them to access this benefit. Based on these two finds and all of the forgoing findings and conclusions of the CARB, the following table summarizes the decision of the CARB with respect to these complaints.

The Property Name and Roll number	Units to Remain as Taxable	Remaining Taxable Assessment
Bob Ward Residence Roll 200684371	1 staff unit	\$138,000
Horizon Park Roll 067138503	1 staff unit	\$154,000
Alice Bissett Place Roll 201217759	1 staff unit	\$175,000
Horizon West Roll 083202002	25 non-subsidized units and 2 staff units	\$3,470,000
Heritage Gardens Roll 112033303	5 non-subsidized units and 2 staff units	\$1,050,000
Horizon 14 059150847	9 non-subsidized units and 1 staff unit	\$1,640,000

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF October 2012.



Presiding Office

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Summary
3. R1	Respondent Disclosure
4. R2	Respondent Summary

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
Residential	Multi-Residential	Charitable or Benevolent	Tax Exemption	Restrictions