

**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:

***Auburn Bay Residents Association, COMPLAINANT
(as represented by Altus Group Limited)***

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER

R. Kodak, MEMBER

B. Jerchel, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	200770196
LOCATION ADDRESS:	200 Auburn Bay Boulevard SE
HEARING NUMBER:	62932
ASSESSMENT:	\$1,970,000

Appeared on behalf of the Complainant:

- Appeared on behalf of the Respondent:

- *D. Mewha* *Agent, Altus Group Limited*
- *T. Sinclair* *General Manager, Sundance Lake Residents Association*
- *C. Groom* *General Manager, New Brighton Residents Association*
- *L. Challes* *Representing, Cranston Residents Association*

“the Act”

The Municipal Government Act

“MRAC”

Matters Related to Assessment Complaints Regulation

“COPTER”

Community Organization Property Tax Exemption Regulation

“ARB Policy”

Calgary Assessment Review Board Policies and Procedural Rules

“Black’s Law”

Black's Law Dictionary

“Oxford”

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

At the commencement of the agenda on September 19th, 2011 the Board had twenty-eight files on the docket set for hearings. One file was not related to the resident association issues and five hearings were deemed to belong to a Local Assessment Review Board (LARB) for hearings as they were residential properties which did not fall under the jurisdiction of this Board. Below are the remaining twenty-two files which had common preliminary, procedural and jurisdictional issues:

ROLL NUMBER:	LOCATION ADDRESS:	HEARING NUMBER:
487029209	212 Tuscany Way NW	62930
200182806	1 Tuscany Glen Road NW	62949
200255677	103 Tuscany Hill NW	62947
487021404	198 Tuscany Way NW	62946
487021503	199 Tuscany Way NW	62944
200182780	2 Tuscany Glen Road NW	62950
487021602	201 Tuscany Way NW	62943
487029100	9 Tuscany Valley Way NW	62941
200770196	200 Auburn Bay Boulevard SE	62932
756000832	3 Suncrest Way SE	64215
756066486	63 Suncrest Way SE	64218
200701712	2 New Brighton Drive SE	62929
201931620	11 Cranarch Road SE	62921
792008906	1 Cranston Drive SE	62952
152077608	16199 McKenzie Lake Way SE	62927
200609766	225 Chaparral Drive SE	62924
201560521	225W Chapparral Drive SE	62925
789016805	50 Chaparral Green SE	62933
789061702	2 Chapala Crescent SE	62934
200919348	711 Chapala Gate SE	62935
200490993	545 Chaparral Drive SE	62938
200373645	232 Chapala Drive SE	62939

Issue 1 - Photograph of Hearing Table:

The Board has determined that any photograph taken by any party of any part of the ARB office including the hearing rooms cannot be used and shall not be used for any purpose regardless if a hearing is in progress or not.

The Respondent (K. Hess) raised a preliminary issue regarding a photograph or photographs taken by the Complainant of the Boards' table. The Respondent wanted to know why and wanted a copy. Prior to the Board entering the hearing room, the Complainant has been accused of breaking posted rules and used a portable electronic device to photograph the hearing room table and email the photograph off premises. Below represents the dialogue between the parties:

R. Brazzell responded to the Respondent's preliminary issue by saying: *"Sure, it (the photograph) was just for the purpose to showing the volume of materials, no one was in the room, it was just a matter of interest but we're happy to provide that (a copy) to the City".*

The Respondent pressed for more information by asking: *"and it will not be used for any other actions..."*

R. Brazzell interrupted and said: *"No! That is not the intent of the photograph."*

K. Hess then stated: *"I expect Mr. Brazzell will forward that to me at the next break."*

At this time legal counsel for the Respondent spoke: *"And if I can just speak up sir, Susan Trylinski, it is the first hearing I have ever attended where pictures have been taken of the table of the Board and I think this is a significant event, we've also, and I will be quite frank with you, we've also been told that the next step here is to go with the legal action so my concern here is that those pictures will somehow make their way into the legal action or be used by the legal counsel or by Altus to demonstrate, look here are pictures of the Board table prior to this hearing starting. So first of all what I am saying is the Board has to carefully consider what to do under these circumstances and secondly, I think the Board has to identify in detail for the record exactly which documents were on the table, is this one hearing? Is this ten hearings? Is this twenty hearings? How many roll numbers and things like that? So those are my observations, and excuse me for interrupting".*

R. Brazzell replied by saying: *"I am not entirely clear the position of the Respondent, they don't want it (the photograph) to show up in this or any other legal proceedings, is that the position of the Respondent?"*

S. Trylinski added: *"Yes that's correct sir, I think that you don't walk into a courtroom and take pictures and if this going to set a different process or procedure, that you're now allowed to come in and take pictures of each other, it is a very, very different matter and as I said, this is the first time I have ever seen this operate in all my entire life as a lawyer."*

R. Brazzell replied by saying: *"I guess my position is, it is not a recording, it's not for the purpose of recording what happened at the hearing, nor anything of that nature, and it is strictly the layout of the room."*

K. Hess asked: *"Mr. Chairman, why would you take a picture? And why would you do it when no one else is in the room? And we have had a suggestion, a fairly significant suggestion, in an email correspondence from Mr. Brazzell over the weekend that if he doesn't get his way at this Board he is going on to Queen's Bench, and he's going there this morning. So I can see no purpose for that picture other than to go in a Queen's Bench application."*

Prior to allowing anymore dialogue, the Board recessed to clearly understand legislation, regulation and policy.

The Board reviewed *the Act* and *MRAC* regulation and found no conclusive prohibition from recording. The *ARB Policy* was reviewed and the Board also noted a sign posted in the hallway leading to the boardrooms. It is clear and not conditional regarding the prohibition of cameras or other electronic devices (see appendix "B").

The Board is satisfied that once the boardroom contains files to be heard by the Board and/or evidence which is automatically deemed evidence for the Board that the proceedings of the Board have commenced. Furthermore the Board finds the signage as you enter the boardrooms could not be any clearer when stating that cameras and recording devices are not permitted in any boardroom.

The Board reconvened, and prior to resuming the preliminary issue, the Presiding Officer had

the Complainants' and the Respondents' swear to the veracity of their evidence.

Secondly the Presiding Officer had understood that there was another individual before the Board who is an attorney in addition to the attorney who introduced themselves as such. The Board was unclear in which capacity this person was appearing before the Board.

After being asked, nearly an hour into the proceedings, R. Brazzell stated to the Board: *"I am here as a tax consultant. Although I am a member of the law society in the provinces of Manitoba and Alberta, I am not here as a lawyer, I am not here as legal counsel to Altus or legal counsel to the residents associations. I am here as a tax consultant and that is specifically contemplated in the code of professional conduct that if you are going to act as something other than as legal counsel that at the hearing you clarify the capacity in which you're acting when you are acting in activities other than the practice of law. I am not here practicing law I am here as a tax consultant on behalf of the Complainants."*

K. Lilly stated: *"The same thing applies to myself"*. The Presiding Officer had no knowledge of K. Lilly's legal training and asked all others who are to appear before the Board to disclose if they are members of the law society and if they are appearing before the Board in that capacity. The only person appearing as legal counsel that the Board was aware of is S. Trylinski who clearly articulated that fact at the first available opportunity.

The Board is unsure why R. Brazzell and K. Lilly chose not to disclose their status as Officers of the Court during introductions, chose not to disclose their status the first time they spoke to the Board and chose not to disclose their status when taking the oath. The Board is quite concerned by these choices and can only assume that all testimony, prior to the disclosure of their status, was done so in their capacity as Officers of the Court and as members of the Law Society of Alberta.

In resuming the preliminary issue, the Board questioned the Complainants and learned that there was a photograph taken of the boardroom table, it was taken by K. Lilly and immediately emailed to legal counsel for Altus Group Limited. The Board finds the conduct of the Complainants disturbing and made this clear statement:

A photograph is not permitted of anything within the ARB hearing rooms, there is a sign prior to reaching any of the boardrooms and it applies to every boardroom in this building. That photograph is not a legal photograph, we request that you delete it and it cannot and will not be used in any capacity for this hearing or anything arising from this hearing.

A lengthy discussion ensued as to the Complainant's ability to destroy all copies of the photograph. The Board got the distinct impression that the Complainants had no intention of destroying the photograph, and they choose their words carefully to suggest they would comply with the Board's direction.

At the time this photograph was taken by the Complainant, the boardroom had a full weeks' worth of files on the desk. These files were copied in triplicate so each member of the Board had their own copy. The docket for the entire week contained twenty-eight files. It is common for each file to contain several hundred pages of paper. Much of this paper is copied twenty-eight times as it is standard practise for all parties to resubmit common evidence to each file. With twenty-eight files and perhaps 300 pages or more on a typical file, there may have been 7,000

to 8,000 pages on the boardroom table. Multiply that 7,000 to 8,000 pages by three and the paperwork could have easily been 21,000 to 24,000 pages. The Board is accustomed to large submissions and, as in the case before us (CARB 2256/2011-P), the Board after hearing the first appeal learned that perhaps 50 to 100 pages were referred to by each party, and this hearing dealt with eight (six under decision CARB 2268/2011-P) of the twenty-eight files, the remaining hundreds of pages in these files were there as backup if the Board required them. In one example, the Complainant entered into evidence 476 pages from one document (three copies) and did not direct the Board to a single word contained within. The Board noted that in addition to the documents disclosed and produced for the Board, there were thousands of pages which were inadvertently duplicated which may have given the appearance of more documents than were actually before the Board. The Board cautions anyone looking at a photograph of perhaps 20,000+ pages and then assuming that the Board or the parties required more time to digest them.

Issue 2 - Postponement Request:

The Board denied the postponement request of the Complainant as there were no exceptional circumstances.

The Complainant requested a postponement for all twenty-eight files on the Board's docket. As one file was not associated with the residents association and five were not under the jurisdiction of the Board, this request pertained to twenty-two files scheduled for hearings.

The legislation and regulations pertinent to the postponement were reviewed in *MRAC 15(1)* and *the Act 468(1)*.

The grounds pertinent to the postponement request as we understand them from the Complainant are:

1. The amount of material submitted by the Respondent, which amounts to approximately 1000 pages was virtually impossible to examine prior to rebuttal deadline,
2. There have been numerous meetings and consultations which have compromised our ability to prepare our rebuttal materials,
3. On Tuesday, September 13, 2011 the Province announced a proposed exemption category for residents associations,
4. The Respondent requested supplemental information from the residents associations, which they received September 12, 2011, only 7 days prior to this hearing,
5. There is opportunity for additional negotiation or compromise to narrow the issues to be adjudicated,
6. The complexity of the matter, which involves 28 (actually 22) roll numbers and the jurisdiction of both the CARB and the LARB dictates that the single day that has been scheduled is not sufficient to hear the matter in a manner fair to the Complainants, and
7. The hearings for 7 different residents associations are presently scheduled for one day and it is not possible to coordinate witnesses or to adequately present the evidence.

The Respondent took the position that there is no need to postpone and specifically commented on each reason provided by the Complainant, as follows:

1. The Complainant could have requested a postponement on receipt of the Respondents materials if they felt they needed more time. Instead the Complainant responded with 371 pages of rebuttal information, and waited until there was less than a single working hour before the hearing scheduled time and a full week after submitting their Rebuttal Documents, before requesting a postponement,
2. There has been one short meeting, prior to receiving the Respondent's disclosure, which should not have hindered the Complainant's ability to respond and indeed the Complainant did respond with hundreds of pages of rebuttal information,
3. The proposed change in regulation will not impact the current year's assessment or this hearing,
4. The Respondent does not need additional time to review the supplemental information and is prepared to proceed. The previous request from the Complainant for a postponement was to allow the Respondent more time to review this same information before the hearing and the fact is the Respondent did not and does not need more time and is ready to proceed,
5. There is no additional negotiation or compromise as the residents associations are taxable, and
6. The Respondent is ready to proceed and came prepared for the two days which were assigned understanding that if more time is required the Board and boardroom is available.

The Board determined the following in regards to the grounds for postponement brought forward by the Complainant:

1. The Complainant seemed capable of understanding the Respondent's Disclosure and responded with hundreds of pages in rebuttal. At no time prior to the Rebuttal Document submission deadline did the Complainant indicate that they needed more time to respond due to the volume or complexity of the issues before them,
2. No documentary evidence exists to collaborate the suggestion that the Complainant was tied up in meetings with the Respondent and therefore unable to properly submit rebuttal information. The verbal evidence from the Respondent refutes this argument,
3. Any future legislative or regulatory change has no effect on these complaints. The Board will interpret the valid legislation and regulation as at the hearing date,
4. The Respondent has confirmed they have received the additional information requested through supplemental request for information forms and acknowledged that they do not need additional time to digest that information. The Respondent is ready to proceed,
5. The Respondent has indicated to the Complainant previously on which files there is room to move or negotiate. The Respondent indicated that there is no need for more negotiation, and is ready to proceed,
6. Any complication which had been created was done so at the request of the Complainant. The ARB put together a proposal to hear the LARB and CARB hearings at the same time to accommodate the request of the Complainant, however, the Complainant has now indicated that they are not consenting to this process and is not sure how the Courts would rule on it. The Board determined, that with the direct threat of Court challenge on a procedural matter, it would

- separate the LARB hearings from the CARB hearings, and
7. This hearing and series of hearings were scheduled in the same manner as is the practice of the ARB. The Complainant, as a professional tax consulting firm, appears before the Board each and every week and is quite aware that typically a series of hearings, while scheduled for one day, are dealt with until the files are complete, which usually spans the course of an entire week. No evidence was produced indicated that the Complainant must complete all hearings during a single day.

Issue 3 - Validity of the Complaint Form:

The Board determined that the complaint forms are valid with the appropriate attachment included as was originally intended by the Complainant. The Board advises Complainant to add their attachment to each complaint form to prevent a file from being dismissed for lack of reasons. In addition all applicable matters (and ONLY applicable matters) must be checked off on the complaint form regardless if they are mentioned on the attachment. The Board notes that the complaint form must have an agent authorization form attached if an agent is being used. No costs awarded.

Prior to the evidence being disclosed the Board became aware of inconsistencies and missing information on many of the twenty-two complaint forms before the Board

Many of the above complaint forms had only two matters indicated in section 4; *an assessment* and *an assessment class* as being incorrect. Some of the forms also had *whether the property or business is exempt from taxation under Part 10* indicated as a matter to be discussed. In addition all of the complaint forms indicated "*see attached*" in section 5 for the requested assessment amount and reasons for the appeal. Only two of the complaint forms actually had an attachment other than the original assessment notice. The two complaint forms which had an additional attachment contained a reference to the remaining twenty complaint forms.

The Respondent indicated that the Complainant filed 900 complaint forms on the final deadline date for the Assessment Review Board to accept complaints, including the twenty-two before the Board. These 900 complaints represented approximately 60% of all the complaints this agency filed yet somehow they expected the ARB clerk to read through all of the attachments and try and sort out which attachment goes with which complaint. This is an unreasonable request and is asking far too much of the clerk. The attachment filed with the complaint form was the actual assessment notice, which when put in context of the complaint forms' "*see attached*" note, indicates that their request is in fact as assessed.

The Board after speaking to the clerk of the ARB determined that the manner in which the complaint forms had been submitted meant no attachments were received on twenty of the twenty-two complaints. The clerk files exactly what has been received. The clerk does not read through each attachment to find a note on the final page expressing that the Complainant wanted these pages to be copied and added to an additional twenty complaint forms. The clerk did indicate though, had they known the attachment pertained to the additional twenty files, they would have added it for the Complainant.

The Complainant indicated that the complaint forms were accepted as submitted, the hearings were scheduled and the disclosure process was completed therefore all the complaints are valid

in their opinion.

The Complainant requested that due to the gravity of the situation and the severity of the recourse that a separate hearing be scheduled to deal with this issue in that within natural justice and procedural fairness they require time to clearly understand the case being brought against them and need to be provided an opportunity to properly defend themselves.

What is at issue is contained within *the Act* sections 460(7) and 467(2) as well as *MRAC* regulation sections 2(1), 2(2) and 9(1). The Board, in making the decision, understood the very harsh consequences for the Complainant. The Board is focussed on providing a fair hearing and ensuring that legislation and regulations are adhered to by all parties and as such conducts a review of the complaint forms in each hearing to determine exactly what is under complaint and whether the complaint is valid. In this case, twenty of the complaint forms as submitted are not technically valid, however, whereas the complaints were accepted and the hearings were scheduled, they appeared to be valid complaints from the ARB's perspective. The Complainant did disclose as required and the Respondent did, in fact, properly answer that disclosure with their own disclosure on all twenty-two files including the twenty with errors. The Respondent did disclose with a great deal of detail, indicating to the Board that the Respondent clearly understood what was under complaint. Therefore there is no prejudice towards the Respondent from the error.

The Board found it prudent to accept the complaints as they were intended to be filed, however, perhaps this is a question better answered by the Court. The Board also wishes to advise anyone placing a complaint before the Board to include reasons on or attached to the initial complaint form. The Board does not recommend referring from two complaint forms to twenty additional complaint forms. The Board notes that the complaint form should also have an agent authorization attached if an agent is being used.

The Board wasted considerable time trying to understand the complaints before the Board and who was permitted to act on behalf of the Complainant. The Board considers this an unreasonable delay and may choose to award costs in the future for such unnecessary delays.

Issue 4 - Failure of the Assessment Review Board to provide complaint forms to the municipality in their entirety:

The Board determined that the complaint forms are valid.

The Respondent indicated that the Assessment Review Board did not provide the municipality with a copy of the complete complaint forms as required. The Respondent is of the opinion that the complaints are not valid and referred to *the Act* section 462(2).

The Respondent further led the Board to *MRAC* 2(1) and 2(2) and requested that the Board follow the regulation and not hear these complaints.

The Board determined that the Respondent could have done a simple review of the complaint form and challenged the validity of the complaints with a preliminary hearing prior to the scheduled time of these hearings. The Respondent had not even noticed the errors until the Board reviewed the complaint forms at the hearing.

Issue 5 - Decision Timeline:

The Board determined to render a decision before the end of the taxation year.

Both the Complainant and the Respondent indicated to the Board that no appeal would be sought under *the Act* 468(1) if a decision is not rendered within 30 days of the hearing. The Board thanked both parties for their understanding and advised both parties that the Board would thoroughly examine the issues and render a decision as expeditiously as possible before the end of the taxation year.

Issue 6 - Evidence:

The Respondent requested that all their evidence, comments, questions and answers as articulated during the hearing of roll number 487029209 be brought forward to this hearing.

The Board determined that all Respondent evidence, comments, questions and answers as presented in decision CARB 2256/2011-P is to be brought forward and incorporated in to this hearing just as if it were presented during this hearing.

No additional preliminary, procedural or jurisdictional issues were raised.

SECTION B: Issues of Merit**Property Description:**

The subject property is owned and used by the Auburn Bay Residents Association (ABRA) and are located in the *neighbourhood community* of Auburn Bay in the South East quadrant of Calgary.

The parcel, located at 200 Auburn Bay Boulevard SE contains 59.95 acres and has a special purpose – recreation land use designation. There are a clubhouse, parking lot, a 43 acre man-made lake and landscaped areas. The clubhouse is approximately 7,000 square feet with various meeting rooms, offices and common area. The ABRA rents space to a day care and a church. The rooms, when not rented for the day care and church, can be used for programs, educational purposes or rented for *private* events. The land area encompasses a water spray feature, tennis court, volleyball court, skateboard park and passive park area. The Cost Approach was utilized by the Respondent to arrive at an assessment of \$1,970,000.

All recreation areas are fenced off and access to the building and recreation area is through a single gate. *Members* must provide proof of *membership*; guests must be signed in and accompanied by a *Member*.

All properties within the ABRA boundary are required to pay an annual *membership* fee by way of an encumbrance. If any property *owner* rents their premises they, at their option, may permit the tenant to become a *Member* by relinquishing their ability as property *owner* to hold *membership*. The *owner* and tenant cannot both hold a *membership* at the same time.

Issues:

The Board deemed the following three matters to have been selected on the complaint form:

- Matter 3 assessment amount
- Matter 4 assessment class
- Matter 10 whether the property or business is exempt from taxation

Upon hearing the complaint it was obvious that only a single matter was before the Board:

- Matter 10 whether the property or business is exempt from taxation

The real issue at hand is the interpretation of *the Act* and regulation as it pertains to the subject property and whether it is exempt from taxation or not. These are the questions the Board must answer:

- Question 1 Is the subject property held by a non-profit organization? (*the Act* section 362(1)(n)(ii), *COPTER* sections 6, 7 and 9)
- Question 2 Is the subject property used solely for community games, sports, athletics or recreation? (*the Act* section 362(1)(n)(ii), *COPTER* section 9(1)(b))
- Question 3 Is the subject property held for the benefit of the *general public*? (*the Act* section 362(1)(n)(ii), *COPTER* section 1(1)(c))
- Question 4 Is the subject property used in the operation of a professional sports franchise? (*COPTER* sections 1(1)(d) and 9(1)(a))

- Question 5 Is the subject property used by persons under 18 years of age at least 60% of the time? (*COPTER* sections 4(2) and 9(1)(b))
- Question 6 Is the subject property restricted greater than 30% of the operating time on the basis of:
- a. race, culture, ethnic origin or religious belief, (*COPTER* 7(1)(a))
 - b. the *ownership* of property, (*COPTER* 7(1)(b))
 - c. the requirement to pay fees of any kind, other than minor entrance or service fees, or (*COPTER* 7(1)(c))
 - d. the requirement to become a member of an organization. (*COPTER* 7(1)(d))
- Question 7 Is the subject property held by and used in connection with a *community association* as defined in the regulations? (*the Act* section 362(1)(v), *COPTER* 12(1)(c))

Complainant's Requested Value: Exempt

Board's Decision in Respect of Each Matter or Issue:

Is the subject property held by a non-profit organization?

The Board found the subject property is owned by a non-profit organization.

The Board reviewed the incorporation documents as found in Disclosure Document C6a, C6b and C4c (pages 8 through 81) and compared the articles of incorporation with the requirements set out in *the Act* section 362(1)(n)(ii), and attendant regulation *COPTER* sections 6, 7 and 9 and have found, in this case, that the Auburn Bay Residents Association is a non-profit organization.

Is the subject property used solely for community games, sports, athletics or recreation?

The Board found the subject property is used solely for community games, sports, athletics or recreation.

The Board reviewed the evidence found in Disclosure Documents C6a (page 6) and Rebuttal Document C5 (pages 61 through 152) and compared it with the requirements set out in *the Act* section 362(1)(n)(ii), and attendant regulation *COPTER* section 9(1)(b) and have found, in this case, that the Auburn Bay Residents Association is used primarily for community games, sports, athletics or recreation. The Auburn Bay Residents Association does rent part of their facility to a church and a not for profit day care which are eligible for exemptions under different guidelines.

Is the subject property held for the benefit of the *general public*?

The Board found the subject property is not held for the benefit of the *general public*.

The Board reviewed the evidence found in Disclosure Documents C6a (page 14, point C), C6a and C6b (pages 28 through 48), and Rebuttal Document C5 (pages 61 and 62) and compared it

with the requirements set out in *the Act* section 362(1)(n)(ii), and attendant regulation *COPTER* section 1(1)(c) and has found, in this case, that the Auburn Bay Residents Association is not held for the benefit of the *general public*.

The Regulation states: "*general public means pertaining to the general community, rather than a group with limited membership or a group of business associates.*" The Board further contemplated what does: *public*, *community*, and *membership* mean. The Board examined carefully the legislation, regulations, and previous decisions rendered by the Municipal Government Board (MGB) and the ARB to clearly understand what the legislators intended when creating the definition of *general public*.

The Board made a decision based on what a reasonable person would conclude after viewing all the evidence and the everyday, average person's perspective of what *public* is; *concerning the people as a whole*. In making this determination the Board carefully examined the previous MGB decisions regarding resident associations, including MGB 090/10 which came to a different conclusion. The Board surmised that the evidence presented in MGB 090/10 must have been significantly different than the evidence before the Board in this hearing.

In many of the previous MGB decisions, the definition of *general public* was based on size versus context. The MGB in their decision MGB 090/10 concluded that a *neighbourhood* that will eventually reach 23,000 was large enough to be the *general public*, which was supported by replacing *general public* with *community* and then concluding that *community* can be replaced with *neighbourhood*.

A *community* can be a *neighbourhood* and a *neighbourhood* can be a *community* but in the opinion of the Board, neither is the *general public* as a whole. A similar replacement exercise can conclude that an *ocean* is a *body of water* and then further conclude that a *body of water* is a *pond*; however a *pond* is no more an *ocean* than a *neighbourhood* is the *public* as a whole or the *general public*.

A key determining factor in the legislature's definition was the disclaimer wherein, "...*rather than a group with limited membership...*" To the Board this was the wording that differentiated the people as a whole from a selection of the *community* having a particular interest. A reasonable person would accept that a *Rotary Club* is a group with a limited *membership* and is also a group of business associates. They are a *community* of similar minded people numbering 1,220,000, yet clearly they are not the *general public* as envisioned by the legislators. This parallel also underlines the size factor considered by MGB 090/10; 1.2 million people is significant however, *Rotary Club*, is not the *general public*, they are a *community* with like interests.

Is the subject property used in the operation of a professional sports franchise?

The Board found the subject property is not used in the operation of a professional sports franchise.

The Board found no evidence to suggest that the resident association operates a professional sports franchise as defined in *COPTER* sections 1(1)(d) and 9(1)(a). The Auburn Bay Residents Association is not used in the operation of a professional sports franchise.

Is the subject property used by persons under 18 years of age at least 60% of the time?

The Board found insufficient evidence to determine whether or not the subject property is used by persons under 18 years of age at least 60% of the time.

The Board found that *COPTER* sections 4(2) and 9(1)(b) require as one test for exemption purposes that 60% of the users of the subject property must be persons under 18 years of age. The Auburn Bay Residents Association has provided insufficient evidence to make this determination.

The Auburn Bay Residents Association requires all persons to present a valid *membership* or be signed in as a guest. The ABRA can tabulate evidence that will very precisely answer this question.

The Board spent little time on this question because even if the evidence clearly supported this question the overall decision has been determined by the *general public* test. The Board also notes that the MGB in their decision MGB 090/10 suggested that the ABRA improve their evidence in this regard.

Is the subject property restricted more than 30% of the time on the basis of race, culture, ethnic origin or religious belief?

The Board found the subject property is not restricted on the basis of race, culture, ethnic origin or religious belief.

The Board found no evidence to suggest that the resident association restricts based on race, culture, ethnic origin or religious belief as defined in *COPTER* 7(1)(a). The Auburn Bay Residents Association is not restricted on the basis of race, culture, ethnic origin or religious belief.

Is the subject property restricted more than 30% of the time on the basis of ownership of property?

The Board found the subject property is restricted on the basis of *ownership* of property.

The Board made a decision based on *COPTER* 7(1)(b) and what a reasonable person would conclude after viewing all the evidence and the everyday, average person's perspective of what an *owner* is; *A person who owns something* and how *ownership* of something is the key determinative to *membership*. In making this conclusion the Board carefully examined the previous MGB decisions which came to a different answer on this question.

The Board does not agree with the conclusion delivered in MGB 090/10 and found that the Auburn Bay Residents Association does restrict *membership* based on *ownership*.

In Disclosure Document C6a, C6b and C4c (pages 8 through 81) is found the Auburn Bay Residents Association Brochure and attached schedules including the articles of incorporation for the Auburn Bay Residents Association. The Board notes the following paragraph (C6a page 14):

"C. *Carma has determined to create and develop the Auburn Bay Amenities with the intention that they be **private** (and in some cases public), non-profit facilities for the **benefit of the residents** of the Auburn Bay Lands.*" [emphasis added]

The Board finds the wording very clear in its intent, to provide *private* amenities for its *Member residents*. In Schedule "C" (C6a pages 28 and 29) of the same Auburn Bay Residents Association Brochure there are definitions of what a *Member* is:

"Member' means a person for the time being entered in the Register of Members of the Company and Members means collectively all of them from time to time, inclusive of Homeowner Members, Rental Members, Family Members, and Tenant Members;

*'Homeowner Member' means the **registered owner** or one of the registered owners (as designated by those registered owners) of an occupied (subject to article 4(i)) single family property, condominium unit, or multi-family residential property in respect of which a separate certificate of title is issued for each unit (or, in each case, a single tenant residing in such property **as designated by the registered owner** or owners thereof) located in the Auburn Bay Lands, who is a qualified Member of the Company;* [emphasis added]

*'Rental Member' means the **registered owner** or one of the registered owners of a multi-family residential rental project located in the Auburn Bay Lands, who is a qualified Member of the Company;* [emphasis added]

'Family Members' means the spouse (whether legally married to or not) of a Homeowner Member or Tenant Member and the unmarried children of such Homeowner Member or Tenant Member and/or such spouse which spouse and children are actually residing in the residential property of the Homeowner Member or Tenant Member;

'Tenant Member' means a tenant actually renting and residing in a multi-family rental project located in the Auburn Bay Lands that may or may not be owned by a Rental Member in accordance with these Articles;"

The Board finds the wording very clear in its intent, to provide *membership* for registered owners and not the *public at large*. Furthermore, if a *Homeowner Member* rents their property the tenant can only become a *Member* if the *Homeowner Member* provides them access and by doing so the *Homeowner Member* relinquishes their entitlement to use the amenities.

The Board, in this case, finds the evidence to be very clear that you must have *ownership* or be approved by the *owner* in order to be a *Member* of the Auburn Bay Residents Association; the *general public* cannot become a *Member*.

Is the subject property restricted more than 30% of the time on the basis of the requirement to pay fees of any kind, other than minor entrance or service fees?

The Board found the subject property is restricted on the basis of the requirement to pay fees of any kind, other than minor entrance or service fees.

The Board found the evidence is clear that *membership* in the Auburn Bay Residents

Association is restricted on the basis of the requirement to purchase a home and pay annual fees and these fees are not minor entrance fees as defined in *COPTER* 7(1)(c).

As determined by the Board, *membership* is not optional for the *residents* within the boundaries of the Auburn Bay Lands. This *membership* is not free nor is it based on a minor entrance fee. The fee is provided by way of an encumbrance on each property (C6b pages 49 through 57); there is only one *Homeowner Member* for each property and that *owner* may provide *membership* rights to a spouse or child as *Family Members* or to a tenant by relinquishing the *owner's membership*.

One can try an old sales technique by minimizing the fees to the ridiculous. This technique is done by dividing the annual fee into numerous individuals comprising the family and then dividing again into daily parts. Salesmen use this technique to suggest that an option is less than the price of a trivial item each day and therefore insignificant. In this case, the Board heard evidence that the typical single family home pays \$400 to \$800 per year and if the family is comprised of four individuals then the daily cost per person is a mere 27 to 55 cents. That sounds great however if you are a one person family and rarely or never use the amenities the fee is still \$400 to \$800 per year, which is clearly not minor.

The Complainant also argued that the encumbrance isn't an entrance or *membership* fee at all but merely a maintenance fee similar to a condominium fee; however, as we read in section 6(a)(ii) of Schedule "C" (C6a page 32), *Members* are suspended from accessing the amenities if any *Member* is in default of paying the fee; that provision is clearly tying entrance to the fees paid. One could try and argue the same thing that the beautifully landscaped areas around the recreation centre are what you are paying for rather than the pool you wish to swim in, however it is clearly the pool that you wish to enter that you are paying for.

The Respondent further argued that the fee is far greater than the annual encumbrance; it is the price of a home in Auburn Bay.

The Complainant argued that in comparison to city owned recreation facilities the fee is quite small. The Board did not hear any evidence which showed how the services offered at a city owned recreation facility compared to the amenities offered by the Auburn Bay Residents Association, nor did the Board hear any evidence how *ownership* or residency restricted access to city owned recreation facilities. What the Board did hear is that if a family of four purchased an annual pass to various recreation centres, the cost was greater than accessing the ABRA amenities.

Is the subject property restricted more than 30% of the time on the basis the requirement to become a member of an organization?

The Board found the subject property is restricted on the basis of the requirement to become a member of an organization.

The Board found no evidence to suggest that anyone may enter the amenities found at the Auburn Bay Residents Association without being a *Member* or a guest of a *Member*. The definition in *COPTER* 7(1)(d) does not stipulate if you enter as a *Member* or as a guest to qualify for exemption however the Board found the intent of this question within *COPTER* was to ascertain whether anyone can walk in off the street and use the amenities. The Board found that

the Auburn Bay Residents Association is restricted on the basis of the requirement to become a member of an organization.

Is the subject property held by and used in connection with a *community association* as defined in the regulations?

The Board found the subject property is not held by and used in connection with a *community association* as exempted in *the Act* section 362(1)(v) and defined in *COPTER* 1(2).

The Board found the definition of "*community association*" clear in *COPTER* 1(2) where it states that *membership is voluntary*. *Voluntary* by definition is *to act of one's own free will* and clearly the evidence as discussed previously in this decision contemplates mandatory *membership* by virtue of residency. The Auburn Bay Residents Association is not held by and used in connection with a *community association* as defined in *COPTER*.

Community associations and resident associations have similarities and they have differences as documented in a Federation of Calgary Communities report entered into evidence in Rebuttal Document C5 (page 266). The differences include: a) *private* nature of resident association's facilities, b) divisive resident association boundaries based on developer and payment versus *neighbourhood*, c) the large disparity in the roles of different resident associations, and d) the limited representative capacity of resident associations.

The Board noted with interest the possible new regulation pertaining specifically to resident associations. The fact the legislators recognize that a specific definition is required highlights the fact that there are differences.

The suggestion that new regulation is forthcoming, as disseminated from a brief overhead presentation (C1) on September 13th, 2011 by a person purported to be from the Government of Alberta Municipal Affairs Department, is of interest to resident associations; however it in no way impacts the decision at hand.

The testimony is that the proposed new regulation will be in place by January 1st, 2012 providing resident associations with an exemption under *COPTER*. It further states that a municipal council may pass a bylaw to make any property exempt under *COPTER* taxable to the extent council considers appropriate.

This proposed regulatory change may be to keep the question of exempt status away from the Board and put it squarely on the elected officials of each *community*.

The MGB 090/10 decision was correct when it stated on page 9:

"Both (community associations and resident associations) exist for the purpose of enhancing the community and the quality of life in the community, as well as providing recreational services to the communities they serve, though the community association has the added jobs of being a political advocate for the residents."

However by drawing this parallel and concluding they look similar therefore they are the same totally ignores *COPTER* 12(1) where the legislators further define *community associations* as a

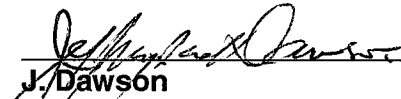
member of the Federation of Calgary Communities. The Board heard evidence that the Auburn Bay Residents Association does not hold *membership* in the Federation of Calgary Communities and does not meet their *membership* requirements.

The Board does not know exactly why the legislators placed such a specific requirement in the regulation in order to qualify for tax exempt status. The Board is not here to recreate legislation; the Board exists to adjudicate and interpret the legislation and regulation before it. The Board cannot ignore a directive which is so precise and clear and grant exempt status where one is not entitled. To do so, undermines the integrity of the Board and the wisdom of the legislators and compels the *community* of Calgary as a whole to pay for services enjoyed solely by the limited *neighbourhood* and *community* of Auburn Bay.

Board's Decision:

The Board finds the Auburn Bay Residents Association does not qualify for tax exemption status through *the Act* or attendant *COPTER* regulation. Assessment Confirmed.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF November 2011.



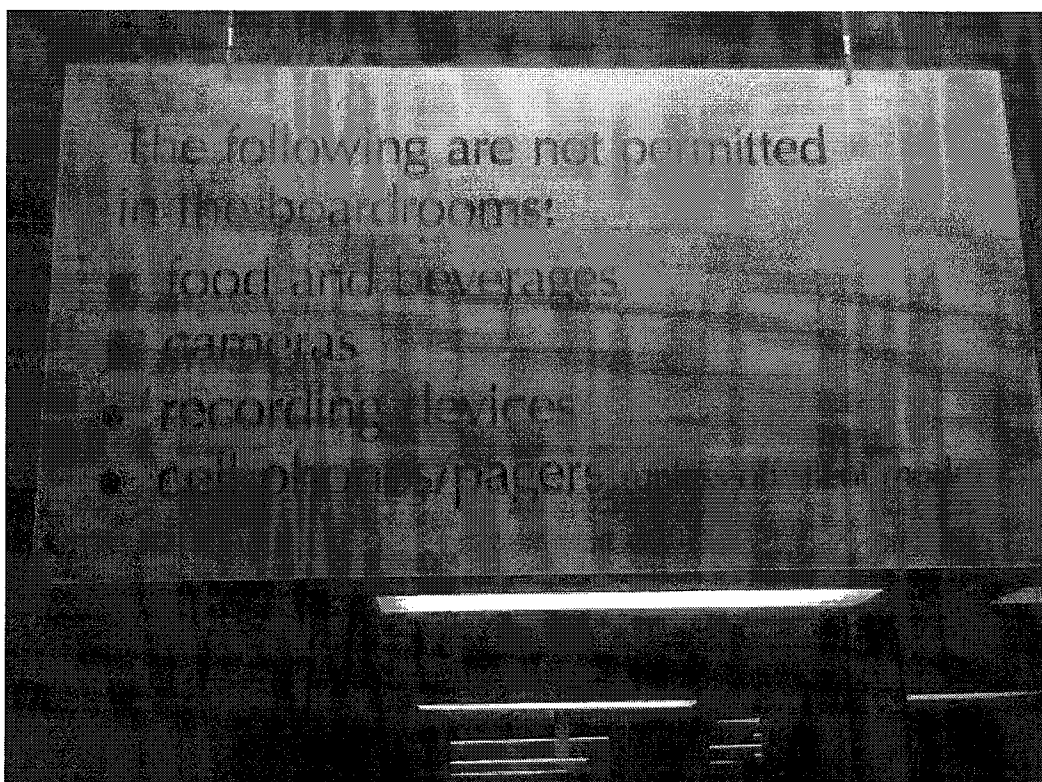
J. Dawson
Presiding Officer

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

NO.	ITEM
1. C1	Postponement request
2. C2a	Complainant Disclosure – Residents Association pages 1 – 35
3. C2b	Complainant Disclosure – Residents Association pages 36 – 71
4. C2c	Complainant Disclosure – Residents Association pages 72 – 107
5. C2d	Complainant Disclosure – Residents Association pages 108 – 143
6. C5	Rebuttal Document – Residents Associations pages 1 – 371
7. C6a	Complainant Disclosure – Auburn Bay pages 1 – 37
8. C6b	Complainant Disclosure – Auburn Bay pages 38 – 75
9. C6c	Complainant Disclosure – Auburn Bay pages 76 – 113
10. C6d	Complainant Disclosure – Auburn Bay pages 114 – 151
11. C6e	Complainant Disclosure – Auburn Bay pages 152 – 189
12. C6f	Complainant Disclosure – Auburn Bay pages 190 – 227
13. C6g	Complainant Disclosure – Auburn Bay pages 228 – 265
14. R1	Email regarding postponement request
15. R2	Respondent Disclosure – Tuscany
16. R3	Respondent Disclosure – Auburn Bay

APPENDIX "B"

PHOTOGRAPHS OF BOARD NOTICE:



APPENDIX "C"**LEGISLATION AND
RESOURCE MATERIALS:****The Municipal Government Act**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

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

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

Complaints**460(7)** *A complainant must*

- (a) *indicate what information shown on an assessment notice or tax notice is incorrect,*
- (b) *explain in what respect that information is incorrect,*
- (c) *indicate what the correct information is, and*
- (d) *identify the requested assessed value, if the complaint relates to an assessment.*

Notice of assessment review board hearing**462(2)** *If a complaint is to be heard by a composite assessment review board, the designated officer must*

- (a) *within 30 days after receiving the complaint, provide the municipality with a copy of the complaint, and*

Decisions of assessment review board**467(2)** *An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).***Assessment review board decisions****468(1)** *Subject to the regulations, an assessment review board must, in writing, render a decision and provide reasons, including any dissenting reasons,*

- (a) *within 30 days from the last day of the hearing, or*
 - (b) *before the end of the taxation year to which the complaint that is the subject of the hearing applies,*
- whichever is earlier.*

Appeal**470(1)** *An appeal lies 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) *a 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).*

Matters Related to Assessment Complaints

Alberta Regulation 310/2009

Documents to be filed by complainant**2(1)** *If a complaint is to be heard by an assessment review board, the complainant must*

- (a) *complete and file with the clerk a complaint in the form set out in Schedule 1*

2(2) *If a complaint does not comply with subsection (1),*

- (a) *the complaint is invalid, and*

- (b) the assessment review board must dismiss the complaint.

Failure to disclose

- 9(1)** A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

Postponement or adjournment of hearing

- 15(1)** Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

Community Organization Property Tax Exemption Regulation

Alberta Regulation 281/1998 with amendments up to and including Alberta Regulation 77/2010

Interpretation

- 1(1)** In this Regulation,
- (c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;
 - (d) "professional sports franchise" means a professional sports franchise operating in the National Hockey League, the Canadian Football League, the National Professional Soccer League or the Pacific Coast League;
- 1(2)** For the purposes of the Act and this Regulation, "community association" means an organization where membership is voluntary, but restricted to residents of a specific area, and that is formed for the purpose of
- (a) enhancing the quality of life for residents of the area or enhancing the programs, public facilities or services provided to the residents of the area, or
 - (b) providing non-profit sporting, educational, social, recreational or other activities to the residents of the area.

Primary use of property

- 4(2)** For the purposes of this Regulation, a property is primarily used for a purpose or use if the property is used for the specified purpose or use at least 60% of the time that the property is in use.

Non-profit organization

- 6** When section 362(1)(n)(i) to (v) of the Act or Part 3 of this Regulation requires property to be held by a non-profit organization or community association for the property to be exempt from taxation, the property is not exempt unless
- (b) the organization or association is
 - (i) a corporation incorporated in any jurisdiction 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(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.
- 7(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.
- 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.

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

- 9(1)** The following property is not exempt from taxation under section 362(1)(n)(ii) of the Act:
- (a) property to the extent that it is used in the operation of a professional sports franchise;
 - (b) property that is used solely for community games, sports, athletics or recreation if, for

more than 40% of the time that the property is in use, the majority of those participating in the activities held on the property are 18 years of age or older.

9(2) Property is not exempt from taxation under section 362(1)(n)(ii) 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 as modified by subsection (3).

9(3) For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

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

12(1) The following property is not exempt from taxation under section 362(1)(n)(v) of the Act:

- (c) property in Calgary or Edmonton that is held by and used in connection with a community association if the association is not a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues.

Calgary Assessment Review Board Policies and Procedural Rules

Revised – March / 2011

Hearings – evidence and exhibits

37(2) The following forms and statements shall, at the commencement of a hearing, be considered as evidence before the Board without being marked as exhibits;

- (a) a complaint under section 460 of the Act;
- (b) any form or statement of a Property Assessment Notice or Business Tax Notice;
- (c) an Agent Authorization Form.

45 No original Board record, or copy of a Board record, or exhibit, or copy of an exhibit, from any proceedings before the Board, may be removed from the office of the Board without the express authorization of the General Chairman or the clerk of the Board.

48(1) No person, other than the clerk, shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record of Board proceedings.

48(2) No person may, during a hearing, use or employ any electronic device that causes disruption to, or unacceptable distraction in, proceedings of the Board.

Black's Law Dictionary

Bryan A. Garner (Editor-in-Chief). © 2009. Black's Law Dictionary (9th ed.). St. Paul: Thomson Reuters;

- community,** 1. A neighbourhood, vicinity, or locality. 2. A society or group of people with similar rights or interests. 3. Joint ownership, possession, or participation.
- ownership,** The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable.
- neighbourhood,** 1. The immediate vicinity; the area near or next to a specified place. 2. People living in a particular vicinity, usu. forming a community within a larger group and having similar economic statuses and social interests. 3. The condition of being close together.
- private, adj.** 1. relating or belonging to an individual, as opposed to the public or the government.
- public, adj.** 1. Relating or belonging to an entire community, state, or nation. 2. Open or available for all to use, share, or enjoy.
- public, n.** 1. The people of a nation or community as a whole. 2. A place open or visible to the public.
- resident, n.** 1. a person who lives in a particular place. 2. a person who has a home in a particular place. In sense 2, a resident is not necessarily either a citizen or a domiciliary.
- voluntary, adj.** 1. Done by design or intention. 2. Unconstrained by interference; not impelled by influence. 3. Without valuable consideration or legal obligation; gratuitous. 4. Having merely nominal consideration.

The Canadian Oxford Dictionary

Katherine Barber (Editor-in-Chief). © 2004. The Canadian Oxford dictionary (2nd ed.). Toronto: Oxford University Press Canada;

- community,** 1 a. All the people living in a specific locality. b. A specific locality, including its inhabitants. c. A small incorporated municipality. 2. A body of people having a religion, a profession, etc., in common. 3. Fellowship of interests etc.; similarity. 4. A

	monastic, socialistic, etc. body practising common ownership. 5. Joint ownership or liability. 6. The public.
exclusive , adj.	3. tending to exclude others, 4. catering for few or select customers.
general , adj.	1 a. completely or almost universal. b. including or affecting all or nearly all parts or cases of things. 2. prevalent, widespread, usual. 3. not partial, particular, local, or sectional. 4. not limited in application; relating to whole classes or all cases.
general public , n.	the people of a community collectively, esp. those not enjoying special privileges.
membership , n	1. The state or condition of being a member. 2. The number of members in a particular body. 3. The body of members collectively.
owner , n.	A person who owns something.
neighbourhood , n.	1 a. A district, esp. considered in reference to the character or circumstances of its inhabitants. b. A small, but relatively self-contained section of a larger urban area. 2. the people of a district; one's neighbours. 3. The nearby or surrounding area, the vicinity. 4. Belonging to or serving a particular neighbourhood.
private , adj.	4 a. not open to the public. b. for an individual's exclusive use.
public , adj.	1. Of or concerning the people as a whole. 2. Open to or shared by all the people. 3. done or existing openly.
public , n.	1. The community in general, or members of the community. 2. A section of the community having a particular interest or in some special connection.
resident , n.	(often followed by 'of') 1. a permanent inhabitant (of a city, neighbourhood, building, etc.).
resident , adj.	1. residing; in residence.
Rotary Club , n.	a local branch of Rotary International.
voluntary , adj.	1. Done, acting, or able to act of one's own free will: not constrained or compulsory, intentional.

An appeal may be made to the Court of Queen's Bench, as per section 470 of the Act, 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.

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Recreation	Other Recreation	Exemption	COPTER