

**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:**

***CALGARY MASONIC TEMPLE LTD., COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***Board Chair P. COLGATE  
Board Member E. BRUTON  
Board Member B. JERCHEL***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

**ROLL NUMBER: 068134204**

**LOCATION ADDRESS: 330 12 AVENUE SW**

**FILE NUMBER: 68502**

**ASSESSMENT: \$1,870,000.00**

This complaint was heard on 24th day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- R. Bonnett – Representing Calgary Masonic Temple Ltd.
- B. van Helden – Representing Calgary Masonic Temple Ltd.

Appeared on behalf of the Respondent:

D. Satoor – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] As there were no jurisdictional or procedural matters, the Board proceeded to hear the merits of the complaint.

[3] References have been made to numerous sources of material using the following abbreviations, relevant sections of these resources are found in Appendix "C":

<b>"the Act"</b>	<b>The Municipal Government Act</b> <i>Chapter M-26, Section 460, Revised Statutes of Alberta 2000</i>
<b>"MRAC"</b>	<b>Matters Related to Assessment Complaints Regulation</b> <i>Alberta Regulation 310/2009</i>
<b>"MRAT"</b>	<b>Matters Related to Assessment and Taxation Regulation</b> <i>Alberta Regulation 220/2004</i>
<b>"COPTER"</b>	<b>Community Organization Property Tax Exemption Regulation</b> <i>Alberta Regulation 281/1998</i>

**Property Description:**

[4] The subject property, known as the Masonic Temple, is a 1928 three storey office building located in the Beltline community at 330 12 Avenue Sw. The structure has 17,000 square feet of assessable area, situated on a 0.24 acre parcel of land.

[5] The subject property is assessed for \$1,870,000.00.

[6] The Land Use designation is CC-X or City Centre Mixed Use.

**Issues:**

[7] Should the subject property be granted tax exemption under the appropriate sections of the Municipal Government Act (MGA) and the Community Organization Property Tax Exemption Regulation (COPTER) relating to tax exemption?

[8] The assessed value is not under complaint before this Board.

**Complainant's Requested Value:** \$1,870,000.00 Tax Exempt

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

[9] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[10] Both the Complainant and the Respondent submitted background material in the form of site maps and ground level photographs.

[11] Prior Assessment Review Board decisions and higher court decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give the appropriate weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

**Issue: Should the subject property be exempt from taxation?**

**Complainant's Evidence:**

[12] The Complainant, Mr. Bonnett, submitted the subject property was owned by the Calgary Masonic Temple Ltd. as an umbrella for the 'shareholders', comprised of several Lodges.

[13] The Complainant is seeking exemption from taxation under the guidelines as set out by the Act and COPTER, for charitable and benevolent purposes.

[14] The Complainant argued the Calgary Masonic Temple Ltd. qualified for exemption under section 362(1)(n)(iii) B of the Act and Sections 4, 7 and 10 of COPTER.

[15] The Complainant stated a "2012 Application for Property and Business Tax Exemption" was submitted to the City of Calgary on September 26, 2011, but the application was denied. (C1, Pg 55-58) This is the basis for the complaint before the Board.

[16] It was the argument of the Complainant that the City of Calgary erred in its interpretation of the Act and COPTER, when ruling on the time the property was in use for charitable and benevolent purposes and that the use of the property was restricted more than 30% of the time it was in use.

[17] The Complainant submitted a copy of the "Certificate of Incorporation" for the Calgary Masonic Temple Limited, dated September 30, 1927 (C1, Pg. 52) as well as background material on the Masonic Foundation of Alberta, The Grand Lodge of Alberta and its Declaration of Principles (C1, Pg.59-66)

[18] The Complainant submitted a table, Calgary Masonic Temple Limited, which reviewed the revenue and expenses of the umbrella organization responsible for the operation of the temple. (C1, Pg. 74) and a summary of the Donations for the Years 2009 to 2011 made by the

various Lodges. (C1, Pg. 75)

[19] A chart of the 'Building Usage 2011' was submitted to address the percentage of time the owners (or Lodges), versus non-owners, used the building. (C1, Pg. 76) The analysis indicated the owners occupied the building 53.3 % of the time that the property was in use, with non-owners occupying the space for 46.7% of the time that the property was in use. The for-profit groups accounted for 7.44% of the time that the property was used in 2011 (N.B. - A revised copy of the table was presented at the hearing with corrected percentages) These hours were supported by copies of each month's calendar for 2011 indicating the groups meeting and in many cases the time the space was occupied. (C1, Pg. 78-89)

[20] Extensive material was submitted with respect to some of the user groups which have utilized space in the Masonic Temple – Core Potentials Training Inc., The Top Hat Society, Metaphysical Center of Canada Corporation, Functional Synergy. Some are non-profit while the balance is for profit groups. (C1A, Pg. 115-135)

[21] The Respondent submitted into evidence the decisions of prior hearings before the Assessment Review Board (ARB), the Municipal Government Board (MGB) and the Composite Assessment Review Board (CARB). (C1A, Pg. 137-185) The results of which gave differing opinions as to the question of tax exemption for the property. For 2008 the MGB decision was for the tax exemption of the property. For 2009 it was the ARB decision the property was taxable, which was overturned by the MGB which decided the property was exempt from taxation. In 2010 the CARB decided the property did not meet the requirements for exemption from taxation, but did reduce the assessment. The 2011 CARB decision confirmed the property as a taxable property.

[22] A copy of the 'Property Tax Exemptions in Alberta' guide (C1A, Pg. 187-C1B, Pg. 276) which provides information about property tax exemptions "to members of non-profit organizations, municipal administrators, property assessors, and others", to show that the Freemasons fell within the group for service clubs which were identified as having a usual status as exempt.

### **Respondent's Evidence:**

[23] The document, "Exemption Administration of Properties Used for a Charitable or Benevolent Purpose that is for the Benefit of the General Public", was submitted by the Respondent to outline the relevant legislation to be considered when reviewing the requests for exemption for any property. (R1, Pg. 3-15) The Respondent noted any property which is operated by a non-profit organization for use for charitable or benevolent purpose is exempt from taxation under Section 362(1), *provided it meets the qualifications set out in COPTER*.

[24] These qualifications included use of the property for a charitable or benevolent purpose, restrictions on the use of the property for reasons of fees, membership or 'race, culture, ethnic origin or religious belief' more than 30% of the time the temple was in use. It was the argument of the Respondent that the Freemasons were not open to the general public as the organization actively practices restrictive membership, contrary to COPTER, with restrictions based upon religious belief and character.

[25] The Respondent looked at three tests which were argued the Calgary Masonic Temple Ltd. failed, and thus did not qualify for tax exempt status. (R1, Pg. 6-15)

[26] Test 1 looked to the used of the property for charitable of benevolent purpose. It was agued by the Respondent there was insufficient evidence to show the Complainant, the owner

of the property, provided direct charitable work. The Respondent argued the owner did not provide the charitable work but it was rather the users of the building which provided the charitable and benevolent work. The owner of the property was providing facilities for others to carry out the charitable activities for the community. The Respondent raised questions as to the charitable status of the groups which occupied the temple, but failed to support the argument with evidence. The Respondent argued the providing of facilities to the Lodges, which paid for the use of the space, did not qualify the Calgary Masonic Temple Ltd. for a tax exempt status.

[27] Test 2 examined the practice of the Calgary Masonic Lodges with respect to their membership practices and the resulting effect of the percentage of time the temple is used under restrictions contrary to the ACT and COPTER. The Respondent noted that the Freemasons have published restriction when an applicant seeks membership, with respect to the requirements of membership including interviews, voting by Lodges and requirement to believe in a Supreme Being. The Respondent argued, based upon the restrictive membership, the time the temple was in use exceeded the 30% rule for use by restrictive groups.

[28] Test 3 looked at the restriction by a fee charge for the use of the facilities. The Respondent argued the payment of rent by the Lodges was contrary or Section 7(1)(c) which states the payment of fees of any kind, other than minor entrance of service fees, was a restriction on the use of the temple.

[29] The Respondent noted the prior decisions which denied the request for a tax exempt status.

#### **Complainant's Rebuttal:**

[30] The Complainant responded to a number of the statements entered by the Respondent. Some of the items were corrected by the Respondent in their presentation, such as the source of revenue from sponsored casinos and the process for the transfer of funds to the Masonic Higher Education Bursary Fund.

[31] The Respondent stated there is no significant signage outside of the Temple to invite the public to visit as that is all the signage permitted the City of Calgary. The Complainant advised the Board that the library was run by volunteers and could access by the public when it was staffed or by prior arrangement. Information on the library was posted on their website. (C2, Pg. 4)

[32] The Respondent clarified comments of the Respondent with respect to the hours of use for the building and the full time manager. Also questions of the Temple's rental and parking lot income and the payment of expenses were addressed.

[33] Material with respect to the Masonic Foundation of Alberta, the Charities supported by the Freemasons and questions and answers about Freemasonry were presented by the Respondent. (C2, Pg. 5-16)

#### **Findings of the Board:**

[34] The Board in reaching its decision accepted and had the highest regard for the charitable and benevolent work that the Freemasons do for the community. As the Respondent testified this is not in doubt, however the issue before this Board is with respect to the tax exemption of the property located at 330 12 Avenue SW. Both parties presented extensive material for review by the Board in the determination of its decision.

[35] The Board found the provincial document "Property Tax Exemptions in Alberta" presented contradictory information. On page six of the document (C1A, Pg. 196) the Freemasons were identified as held by a 'Non-profit group', but the usual status for exemption was listed as 'Taxable'. The reader is then directed to page 27 of the publication (C1B, Pg. 217) which identifies the status as 'Exempt'. The document then goes further and outlines the requirements that must be met to grant the property tax exemption. These requirements are an "all or nothing" guideline. If an organization fails for any one of the requirements then it would not be eligible for a property tax exemption. It is the responsibility of any organization, such as the Freemasons to comply with the Act and the requirements under COPTER.

[36] The property must be owned, or leased and operated, by a non-profits organization. COPTER, Section 15

[37] The Board finds there has been no challenge to the ownership of the subject property by the Calgary Masonic Temple Ltd., a recognized non-profit organization. The Respondent conceded there is no dispute the Freemasons do charitable work and are recognized for their contributions.

[38] The Board examined the question raised by the Respondent that the provision of space for the individual Lodges was not a charitable or benevolent act. The Board found the Complainant did provided space for the Lodges, on a cost recovery basis. The rents collected go to the maintaining of the temple not to charitable work. The Board finds this action is not charitable or benevolent as defined under the act or its regulations and accordingly does not qualify for a tax exempt status.

[39] The facility must be used, at least 60% of the time that the facility is in use, for a charitable and benevolent purpose that benefits the general public in the community where the facility is located. COPTER Sections 15(k)(i) and 4(2)

[40] The Board reviewed the evidence of the Complainant as to the number of hours the structure is in use both by Lodges and groups associated with the Freemasons, and outside groups renting space in the temple.

[41] Based upon the hours provided it would appear that the use of the temple by the Freemasons and associated groups amounts to over 90% of the time the temple is in use, with the balance distributed to the outside groups or private functions.

[42] The Board finds simple numbers can be deceiving, for in testimony the Complainant indicated that half the meetings of the Lodges deal with fund raising and the distribution of the donations, while the other half of the meetings dealt with membership activities. If this trend was consistent to the Lodges and associated groups, then the percentage of time spent on charitable and benevolent activities falls below the 70% threshold.

[43] The Board found there was insufficient evidence to accurately set the percentage of time spent on charitable and benevolent activities without full knowledge of how time was spent in each meeting. The Board found the use requirement cannot be answered by this Board without greater details being provided.

[44] The resources must be devoted chiefly to the charitable or benevolent purpose for which the facility is used. COPTER Section 15 (k)(ii)

[45] The Board found the lack of detailed, audited income and expense statements for all the Lodges, as well as the Calgary Masonic Temple Ltd., does not allow for a full review of this restriction. From testimony the Board was advised that the actual handling of funds was conducted by the registered charities which could issue tax receipts for donations. The

Complainant testified that the Calgary Masonic Temple Ltd, was an "umbrella" set up to operate the Masonic temple for the benefit of its 'shareholders/owners'.

[46] The Board found it is the Lodges which carry out the charitable and benevolent activities through the raising of funds and the decisions on how the funds will be distributed.

[47] From the expense and revenue statement submitted for the Calgary Masonic Temple Limited it is clear that the majority of its revenue goes to the operation of the facility.

[48] The Board found the Complainant, the owner of the property, failed to support its request for a tax exemption, based upon the disclosure of income and expenditures.

[49] The property must be unrestricted a minimum of 30% of the time that it is used. COPTER Section 16(2) and the property must not be restricted based upon race, culture, ethnic origin, religious belief, property ownership, unreasonable fees or membership requirements. COPTER Section 7.

[50] The Board examined these two requirements jointly as they are clearly related with respect to the qualifications regarding membership and religious belief and the percentage of time the use is unrestricted.

[51] The Board was presented with two statements, one verbal and one in submitted documents with respect to membership. The Complainant stated that anyone was eligible for membership in the Freemasons organization, all that was required to join was to ask and be admitted. On the surface this does not appear to be a restrictive membership, as to the knowledge of the Complainant no person has been refused. However the Complainant went further and stated that membership in the Freemasons was restricted to men (women and youth had their own groups they could join), the candidate must be interviewed, belief in a Higher Power or Supreme Being, and be approved by the Lodge. This is supported by the documents submitted. The Freemasons' publications stated, "only men with the highest ideals of service to God and their fellow men are admitted" (C1, Pg. 63), "It requires in every member a firm belief in a Supreme Being, however designated", (C1, Pg. 64) and 'Prospective candidates should know that the suitability of every applicant for admission to a Freemason's Lodge is investigated by a special committee of the Lodge. If the committee approves, the nomination is then submitted to a ballot by members of the Lodge". (C1, Pg. 64)

[52] Section 7(1)(d) of COPTER states it is a restriction of the use of a property if individuals are restricted from using the property on any basis of membership, if the membership in the organization is restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and membership occurs within a short period of time after any application or minor fee requirement is satisfied.

[53] The Board found a further restriction as set out in the Complainant's documents in that an applicant for membership must have "a firm belief in a Supreme Being". The Board interprets this restriction to mean that the Freemason's would not allow membership to be granted to an atheist or agnostic or any other group that does not recognize a Supreme Being.

[54] The Board finds Section 7(1)(a) of COPTER is specific on this issue when it defined restriction as one "based on race, culture, ethnic origin or *religious belief*".

[55] The Board finds the Freemason organization in direct contravention of the requirement as set out in COPTER with the application of restrictions to qualification for membership.

[56] The Board found the Complainant, the owner of the property, failed to support its request for a tax exemption, based upon its restriction imposed on membership and thus use of the property.

[57] Additional requirements of the municipality may also apply, such as the requirement for the non-profit organization to have an agreement with municipality concerning the provision of annual information and concerning disposition of the property. COPTER Section 16(4)(5)(6).

[58] The Board finds this section is not applicable as exemption has not been granted to the Calgary Masonic Temple Ltd.

[59] The Board found the Respondents argument with respect to the payment of fees confused. The Respondent equated the payment of a fee by an individual to the payment of the rent by the individual Lodges. The individual is not paying the rent for the Lodge but is making a donation or minor fee payment to the Lodge. It is the Lodge which is paying the rental fee to the Calgary Masonic Temple Ltd. The Board placed little weight on this argument.

[60] After a review of the evidence submitted, the Board found the Calgary Masonic Temple Ltd. failed to comply with all the qualifications for a tax exempt status.

**Board's Decision:**

[61] Based upon the reasons provided, the Board declined the request for a property tax exemption and confirms the taxation status for the subject property as 'Taxable', with an assessment of \$1,870,000.00.

DATED AT THE CITY OF CALGARY THIS 19 DAY OF November 2012.



**PHILIP COLGATE**  
Presiding Officer



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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C1A	Complainant Disclosure
3. C1B	Complainant Disclosure
4. C2	Complainant Rebuttal
5. R1	Respondent Disclosure

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

**RELEVANT LEGISLATION****Municipal Government Act, Chapter M-26, Section 460, Revised Statutes of Alberta 2000**

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

- (n) property that is
- (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by
  - (B) by a non-profit organization,

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

### **Community Organization Property Tax Exemption Regulation, AR 281/2011**

#### **Primary use of property**

4(1) Property is not exempt from taxation under section 362(1)(n)(iii), (iv) or (v) of the Act or Part 3 of this regulation unless the property is primarily used for the purpose or use described in those provisions.

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

#### **Holding property**

5 When section 362(1)(n)(1) to (v) of the Act or Part 3 of this regulation require property to be held by a non-profit organization, a society as defined in the Agricultural Societies Act or a community association for the property to be exempt from taxation, the property is not exempt unless

(a) the organization, society or associate is the owner of the property and the property is not subject to a lease, licence or permit.

#### **Non-profit organization**

6 When section 362(1)(n)(i) to (v) of the Act or Part 3 of this regulation require property to be held by a non-profit organization, community association or residents association as defined in section 13 for the property to be exempt from taxation, the property is not exempt unless

(b) the organization or associations is

(i) a cooperation incorporated in any jurisdiction,

#### **Meaning of restricted**

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

(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.

#### Exemption under section 362(1)(n)(iii) of the Act

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, 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.

#### Day cares, museums and other facilities

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

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

#### Conditions for exemption

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

- (c) the property is not disqualified by virtue of subsection (2) or (3), and

16(2) Property referred to in section 15(a), (b), (c), (e), (f), (j) or (k) is not exempt from taxation if, for more than 30% of the time that the property is in use, the use of the property is restricted within the meaning of section 7.

## FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	-Office	-Stand Alone -Low Rise	-Exemption	-COPTER Regulation