

**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.  
(as represented by Altus Group Limited), COMPLAINANT***

**and**

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

**before:**

***R. Mowbrey, PRESIDING OFFICER  
H .Ang, MEMBER  
T. Usselman, MEMBER***

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

<b>ROLL NUMBER:</b>	<b>068134204</b>
<b>LOCATION ADDRESS:</b>	<b>330 12<sup>th</sup> Avenue SW</b>
<b>HEARING NUMBER:</b>	<b>64147</b>
<b>ASSESSMENT:</b>	<b>\$2,040,000</b>

This complaint was heard on 14<sup>th</sup> day of October, 2011 and the 25<sup>th</sup> day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *G. Kerslake*                      *Agent, Altus Group Limited*  
    *K. Lilly*                         *Agent, Altus Group Limited*  
    *B. van Helden*                *Representative, Calgary Masonic Temple*

Appeared on behalf of the Respondent:

- *D. Satoor*                         *Assessor, City of Calgary*  
    *A. Mathai*                       *Policy Analyst, City of Calgary*

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

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board.

In addition, the Board advised the parties that the Board had no bias on this file.

No objections on procedure or jurisdiction were raised.

K. Lilly, agent with Altus, advised both the Respondent and the Board that K. Lilly is a lawyer, and that she would be representing Altus in the capacity of an agent.

**Property Description and Overview:**

The subject property is a Masonic Temple located in the Beltline area of Calgary. The Complainant argues that the Masonic Temple should be exempt from property taxes because it is a non-profit organization that performs charitable and benevolent services to the community. The members of the Masonic Temple utilize the Temple for their own use and rent out the halls within the subject property to a number of organizations on an hourly or daily basis. The Complainant does earn revenue from adjacent parking lots, but those lots are on a separate title and are not in dispute. The subject property was constructed in 1928.

The Respondent argues that the Masonic Temple does not meet the criteria for tax exemption for the subject property.

The parties also disagree on the assessment value for the subject property.

**Issues:**

1. What is the market value for the subject property?
2. Should the subject property be exempt from property tax?

**Complainant's Requested Values:**

The Complainants requested value is for \$1,340,000 tax exempt.

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

**1. What is the market value for the subject property?**

The Complainant argued that the subject property should be assessed utilizing the income approach methodology and not the sales valuation approach the Respondent utilized.

The Complainant provided the Board with an income approach to valuation utilizing \$14 per square foot rental rate for offices, \$8 per square foot for offices below grade and a 8.5% capitalization rate to the net operating income to produce a truncated value of \$1,340,000. (Exhibit C-1 page 112).

The Complainant argued at length regarding the highest and best use of land as though vacant. The testing criteria in highest and best use analysis of both the land as vacant and the property as improved must meet four implicit criteria.

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Maximally productive

Appraisal theory holds that as long as the value of a property as improved is greater than the value of the land as though vacant, the highest and best use of the property as improved. However, in practice a property owner who is developing a parcel of land may remove an improvement even when the value of the property as improved exceeds the value of the vacant land. Investors are not likely to pay large sums for the underlying land simply to hold on to the property until the value of the remaining improvement has decreased to zero. The costs of demolition and any remaining improvement value are worked into the test of financial feasibility for development of the land. (Exhibit C-1 pages 72 – 83). The Complainant provided the Board with a map showing a lot of vacant land in the downtown Beltline area. (Exhibit C – 1 page 90).

The Complainant provided the Board with 2011 Beltline office net rental rates and 2011 Beltline capitalization rates. (Exhibit C-1 pages 92 and 93). The Complainant provided the Board with market rental rates in the Beltline similar to the subject property. Leases ran from 2 – 6 years and the median rental rate was \$14 per square foot. (Exhibit C-1 page 91).

The Complainant provided the Board a chart that detailed Beltline office equity comparables to the subject property. (Exhibit C-1 page 95). The median value for the subject property was \$108 per square foot compared to the subject property's assessment of \$152.57 per square foot. The Complainant advised the Board that if one utilizes the income approach methodology to the subject property the 2011 assessment per square foot would be \$99.97, which approximates the equity comparables. (Exhibit C-1 page 95).

The Complainant provided the Board with a number of Assessment Review Board decisions showing the Board places more emphasis on the income approach to value. (Exhibit C-1 pages 118 – 138).

The Complainant provided the Board with a Board Order by the Municipal Government Board that centred on the opinion that the highest and best use of the subject property is something other than its current use. The MGB opinion went on to say that unless such a study is commissioned, any argument that the current use is not the highest and best use can only rely on conjecture and unsupported opinion evidence which may not be sufficient to meet the onus test. (Exhibit C-1 pages 160 – 172).

The Complainant provided the Board with a Queen's Bench decision that stated "I accept the Applicant's submission that this only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was unreasonable for MGB to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past." (Exhibit C-1 pages 152-159).

The Complainant provided the Board with third party reports that indicated a Beltline vacancy rate of 15%. (Exhibit C-1 pages 173-188).

The Complainant reiterated the position that there is no demand for vacant land in the Beltline area and that a number of Beltline properties were sitting vacant or others that were pre-approved projects that have been put on hold and some have been halted or cancelled all together. The Complainant argued that the subject property should be assessed for what it is and not what it could be some time in the future and stated there was no demand for alternative uses. (Exhibit C-1 59-63).

The Complainant argued that the Respondent's income approach using the Complainant's requested parameters was flawed as the office space breakdown was inaccurate. The office space below grade is about double the space that was shown on the analysis.

The Complainant advised the Board that the Respondent's court ordered/foreclosure sales in the Beltline were suspect as two of the properties were multi-residential and the court ordered sales did not fit with the definition of market value within the MGA.

The Complainant challenged the Respondent's evidence regarding the sales. The Complainant noted that a few had a motivated buyer that would skew the selling price. In addition, the sales were not time adjusted and there was no adjustment for location.

The Respondent advised the Board that the subject property was assessed using the direct sales methodology, when the capitalized income value is outstripped by the established land value. The Respondent clearly stated that the direct sales approach is the preferred method of assessment to determine the market value of the subject property and the City is mandated to assess properties at market value.

The Respondent advised the Board that the diminished Beltline income parameters at the time of valuation have had an effect whereby the improvements to each of the subject properties were exposed to a short-term market influence which resulted in an incapability of producing capitalized income values that exceed established land values. The Respondent went on to say that more importantly, this results in a capitalized income value that is incapable of reflecting market value. The Respondent noted that Composite Assessment Review Boards have established that the property's land value best represents its market value where the land value estimate exceeds the capitalized income value estimate. Further, the Respondent noted that it would be a logical notion that any willing seller would be hesitant to sell their property for less than its land value. The Respondent advised the Board that neighbouring properties have been valued in the same manner as the subject property, provided their respective income values are superseded by the established land value. The Respondent noted that this creates fairness and equity. (Exhibit R-1 pages 12-13).

The Respondent provided the Board with an example that a newer, functioning building would be assessed for less than the same parcel without a building if the Complainant's requested application of the income approach were utilized and this is inequitable. Applying the land value to both improved and unimproved parcels does establish equity. Thus, the City of Calgary's implementation of land only market value as the lower threshold for assessment. (Exhibit R-1 pages 14-15).

The Respondent provided the Board with a chart showing sales in the Beltline area. The five sales showed an adjusted sale price per square foot median of \$203. In addition, the residual land rate per square foot showed a median of \$196, and thus the 2011 assessed value for Beltline land was established at \$195 per square foot. (Exhibit R-1 page 27). Documentation on the five sales was on Exhibit R-1 pages 28-90.

The Respondent provided the Board with a response to the Complainant's Beltline office equity comparables. The Respondent noted the comparables had much larger building relative to the size of the land compared to the subject property. The building/land ratio for the Complainant's comparables was 2.32 compared to compared to 1.28 of the subject property. (Exhibit R-1 page 92).

The Respondent provided the Board an income approach analysis which indicates a value of \$1,940,000. The Respondent advised the Board that the indicated value was within 5% of the 2011 assessment. (Exhibit R-1 page 108).

The Respondent provided a chart to the Board for court ordered/foreclosure sales in the Beltline area. Since these sales took place under duress, these sales do not fit the Municipal Government Act definition of market value. These sales often represent sale prices that are less than true market value. These sales are typically on the low side of the value range because financial institutions are highly motivated to sell and maybe required for banking regulations to remove the property from its books. The four sales including the post-facto sale had a sale price per square foot of \$200, compared to the 2011 assessment of \$195 per square foot in the Beltline area. (Exhibit R-1 page 111).

The Respondent provided the Board with a number of Composite Assessment Review Board decisions that support the Respondent's argument that the direct sales approach is the correct methodology to utilize when the capitalized income approach is lower than the vacant land value. (Exhibit R-1 pages 181-290).

The Respondent asked the Board to confirm the 2011 assessment of \$2,040,000.

**Board's Decision:**

1. The decision of the Board is to confirm the 2011 assessment of \$2,040,000.

**Reasons for the Board's Decision.**

The Board finds that the current use of the property does not represent the highest and best use of the land. The Complainant's income approach indicates the subject property is not capable of producing a capitalized income in excess of the value of the underlying land (as though vacant).

The Board finds that the income approach to value with the subject property fails to adequately account for the value of the land and the Board notes that a seller would be very reluctant to selling a parcel of land less than its market value. The Board finds that the subject property cannot be valued for less than its basic land value. Therefore the Board finds the highest and best use of the subject property is vacant land and therefore the valuation of the Respondent is appropriate.

The Board accepts the Respondent's direct sales assessment methodology for land sales as a fair and equitable manner to capture the fair market value of the subject property.

In considering the direct sales approach, the Board finds that the Respondent's sales comparables are fair and reasonable.

The Board was unable to accept the income approach to valuation the Complainant used and therefore placed little weight on that evidence.



The Board was persuaded by the Respondent's evidence regarding an equity chart that showed a number of properties compared to the subject property.

The Board was persuaded by the Respondent's court ordered/foreclosure sales in the Beltline area. Even though the City of Calgary does not use these sales in their mass appraisal process, the selling price per square foot was still higher than the \$195 for the 2011 assessment.

The Board was influenced by the number of Composite Assessment Review Board decisions that have occurred in the last year that support direct sales methodology.

The Board finds the \$195 per square foot to be fair, equitable and correct for the subject property.

## **2. Should the subject property be exempt from property tax?**

The Complainant argued that the subject property qualifies for an exemption under s.362 (n) (iii) (B) of the *Municipal Government Act, (MGA)* and sections 4, 7 and 10 of the *Community Organization Property Tax Exemption Regulation. (Copter)*. The *MGA* provides several considerations which must be satisfied to obtain tax exemption. The Complainant stated that the most critical issues are: a) of the time the property is in use, 60% of that time must be used for charitable and benevolent purposes and b) the use of the property must not be restricted more than 30% of the time within the meaning of section 7 of *Copter*.

The Complainant submits the purpose of the property is to further the charitable and benevolent goals of the Freemasons by providing space for groups and members of the public to carry out activities which fit within these limits.

The Complainant stated that in respect to s.7 in *Copter*, no restrictions are made on people or groups who would like to rent the property. The Freemasons use the property less than 30% of the time, so any membership requirements do not come into play when considering whether the property is restricted within the meaning of s.7 of *Copter*. The Complainant submits that even when the conditions of membership are examined, it is not restricted within the meaning of s.7 of *Copter*.

The Complainant advised the Board the subject property was declared property tax exempt by the *Municipal Government Board* in 2008 and 2009. In 2010, the Complainant advised the Board, under the new system with the Composite Assessment Review Board (CARB), the CARB did not find the subject property to be exempt. The Complainant advised the Board that the 2010 Board erred in its interpretation of *Copter* in finding that organizations that use of the subject property must be registered non-profits in order to be considered "charitable and benevolent". The Complainant stated, in fact, there is no such stipulation in either the *MGA* or *Copter* with respect to s.362 (11) (n) (iii).

The Complainant provided the Board with a flow chart that sets out tests and provides an executive summary of the Complainant's position and supporting evidence. (Exhibit C-1 pages 198-199).

On the 2010 CARB decision, the Complainant stated that the subject met all the tests except that the groups renting the facility were not registered non-profit organizations. The Complainant advised the Board that this was in error. The Complainant notes the 2010 CARB relied on s.6 of Copter which states:

6. When s.362(1)(n)(i) to (v) of the Act or part 3 of this regulation requires Property to be **held** by a non-profit organization or community association for the property to be exempt from taxation, the property is not exempt unless

- (a) the organization or association is an association is a society Incorporated under the Societies Act, or
- (b) the organization or association is
  - (i) corporation incorporated in any jurisdiction, or
  - (ii) any other entity established under a federal law or law of Alberta that is prohibited, by the laws of the jurisdiction Governing its formation or establishment, from distributing Income or property to its shareholders or members during its existence.

The Complainant argued that the key phrase is "held by" and notes that s.362 (1) (n) (iii) under which the exemption is being argued states:

- (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

The Complainant stated that the relevant section uses **owned by** so s.6 of Copter does not apply at the first instance. The Complainant stated that even if the Calgary Masonic Temple owns and holds the property, and is a registered non-profit organization, this meets the requirements under s.6.

The Complainant stated that when s.4 and 10 are examined, there is only a requirement that the **use** is for a charitable and benevolent purpose-there is no mention of any requirement that the user of the property be a registered non-profit.

The Complainant advised the Board that Copter

10(1) property referred to in s.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.

The Complainant also noted that the 2010 CARB stated that the Complainant did not provide evidence as to the function of the groups that use the subject property or the amount of time they utilize the property. The Complainant advised the Board that the evidence has been provided with this appeal. The evidence as pointed out to the Board includes, but not limited to users, hours, calendars, letters, advertising materials, history, workshops etc. (Exhibit C-1 pages 248-293).

The Complainant challenged the Respondent concerning the Respondent's position that the Complainant did not submit the exemption application requested by the Complainant for the 2011 exemption issue. The Complainant provided the Board with a Canada Post receipt dated September 2, 2010.

The Complainant challenged the Respondent who indicated that people did not have easy access to the subject and the door was locked. The Complainant clarified the issue that people wishing to enter the facility had to ring a doorbell to be admitted, but the door locked was for security and safety reasons.

Further, the Complainant challenged the Respondent who indicated the Complainant should not appeal to the CARB, until they have resolved the adjudicative process with the City. The Complainant provided the Board with the "Boardwalk" decision which essentially states that the assessor could have resolved this issue. Part of the "Boardwalk" decision states: "the issue became irretrievable after assessments. All this violated the rules of natural justice and procedural fairness. None of that can stand of appeal." In addition, the MGB has ruled that it has the legislative authority to resolve this issue.

The Complainant concluded that the subject property meets all the tests set out in the MGA and Copter. The subject is a registered non-profit organization whose purpose is both charitable and benevolent with the definition of Copter. In addition, the Freemasons have placed no restrictions on who may make use of the subject property. The property may be utilized by a person or organization of any race, culture, ethnic origin or religious belief. The Complainant advised the Board that the Complainant does not use the subject property more than 30% of the time, thus the requirement of s.7 Copter is met.

The Respondent provided information to the Board regarding the Respondent's position that the subject property is owned by the Calgary Masonic Temple Ltd. which is a non profit charitable organization more commonly known as the Freemasons. The Respondent noted the Freemasons are a fraternal association that as a group have common values and are devoted to charitable and benevolent purposes such as further education, scholarships and fundraising for people in need. The Freemasons are

recognized as a group that performs community work.

The Respondent advised the Board that the Complainant chose not to submit an application for a 2011 tax exemption to the City of Calgary. The Respondent notes that a tax exemption application is included with the Complainant's evidence submission as part of this adjudicative process, no 2011 tax exemption application and supporting information was submitted for the City of Calgary's administrative consideration.

Therefore, the Respondent respectfully asked the Composite Assessment Review Board not to interfere in a tax status decision unless it can be shown that the organization has sought exemption through the municipality and has been denied.

The Respondent cited ARB 0727/2010P, which provided the following guidance.

"The position taken by the Complainant is that there need not be any request to the City of Calgary to expand the exemption in the case of the Calgary Progressive Lifestyles organization or for exemption by the Christian Research Institute for the specific space they occupy. The CARB views this position as ludicrous. The municipality has the responsibility to assess all properties within its bounds unless certain properties are exempt. The municipality has no way of knowing which properties may be eligible for exemption under the Act or the Community Organization Property Tax Exemption Regulations unless such an organization comes forward with their request and the required evidence to prove the circumstances which warrant the exemption. The CARB is not prepared to intervene in this process unless it can be shown that the organization has sought exemption through the municipality and has been denied."

The Respondent advised the Board that the Respondent actively requested a 2011 tax exemption application; however, no corresponding information was provided to the municipality for an evaluation of 2011 tax status. (Exhibit R-1 page 309).

Notwithstanding the Respondent's position that the CARB not intervene on the 2011 taxable status of the subject property based on ARB 0727/2010-P, the Respondent stated that the Freemasons property use and activities are not charitable or benevolent purposes under *MGA s.362 (1) (n) (iii)* because the Calgary Masonic Temple Ltd. undertakings are principally that of a private club. The Respondent further noted that the resources of the Calgary Masonic Temple Ltd. are not chiefly used for charitable or benevolent purposes as required under *MGA s.362 (1) (n) (iii)* and *Copter s.10 (1)*.

The Respondent advised the Board that Freemasons is not open to members of the public as membership is restricted on the basis of religious beliefs and upstanding character. In addition, the Respondent submits that the absence of evidence that the Complainant genuinely encourages or promotes broad public access or not-member use of the property effectively demonstrates the property does not meet the unrestricted use thresholds under *Copter s.7* and *10 (2)*.

The Respondent stated that applying the reasonable person standard, a member of the

general public would not be aware of the subject's property's public accessibility based on;

- (a) exterior signage at the subject property: and/or
- (b) public information and awareness efforts by the Complainant

Therefore, the Respondent notes that the actual use of the property by non-members, as evidenced by the Complainant, does not demonstrate compliance with Copter s.10 (2). The Respondent stated that any real public access to the subject property is insufficient to meet the requirements under Copter s.10 (2).

In response to the Complainant's submission, the Respondent submits the 2010 CARB finding that external organizations renting the subject property must have registered non profit status was based on a supposition that a bona-fide offer of Beltline meeting space at nominal cost to Calgary's needy non-profit community may be a benevolent undertaking and use under *MGA s.362 (1) (n) (iii)*. The Respondent further submits, even under such a supposition, the Complainant's evidence of non-member use of the property, by a variety of external organizations and people, does not demonstrate use by individuals that are:

- (a) arms-length of the Complainant or Freemasonry
- (b) legitimate non-profit charitable organizations; and
- (c) using the property free of charge or at a nominal cost;

Additionally, the Respondent submits that property use for commercial rental arrangements, as in the case of the subject property, does not constitute an activity that would be charitable or benevolent purpose.

In conclusion, the Respondent asked the Board to deny any tax exemption because:

(a) the Complainant has not met the onus to follow due process to gain tax exempt status for the subject property by submitting an application to the municipality; or

(b) the subject property's use does not meet requirements for a charitable or benevolent use under *MGA s.362 (1) (n) (iii)* nor certain requirements set under *Copter* pertaining to *MGA s. 362 (1) 9n) (iii)*.

### **Board's Decision:**

2. The decision of the Board is to make the subject property taxable for the 2011 taxation year.

### **Reasons for the Board's Decision.**

The Board agrees that the property is owned by the Calgary Masonic Temple Ltd. and it is a non-profit organization.

The Board was not persuaded that the Complainant does not use the subject property less than 30% of the time. The Board notes that four of the fourteen Masonic groups have administrative offices in the subject property on a permanent basis. (Exhibit C-1 page 249).

The Board was not convinced that 60% of the time the subject property was used for charitable and benevolent purposes. The Board notes that fourteen Masonic groups regularly use the Masonic Temple.

- Eight (8) Masonic Lodges
- Two (2) Orders of Eastern Stars
- One (1) the Scottish Rite
- One (1) the order of Demolay
- Two (2) Orders of Jobs Daughters

Section 7 of COPTER states that the use of the property cannot be restricted more than 30% of the time by a number of factors. The Complainant submits that 70% of the facility is available to rent to groups and that no restrictions are made as to who the organization is rented to so long as the organization's goals or acts are consistent with the charitable and benevolent purpose of the Freemasons. However, there are specific requirements to be the members of these groups based on their age and gender; believes in Supreme Being; membership fees and citizen of good standing. These restrictions to membership are in direct contrast to section 7 of COPTER.

The Complainant stated that the subject property was available for 70% of usable space for rental. However, the not for profit organizations use the subject property for an average of 35 to 40% of the time. The Board placed little weight on the schedules and calendars of the Complainant showing the total usage of the subject property. (Exhibit C-1 pages 253-257). There was insufficient evidence to support the usage for charitable and benevolent purposes.

The Board finds that there is insufficient evidence that the Complainant undertakes substantial charitable and benevolent works that benefit Calgarians. The only evidence before the Board is one donation letter of \$625.75 for the year and one letter from Variety – The Children's Charity to support the charitable and benevolent purposes.

The Board does agree that the Board has the authority to hear the exemption issue from the Complainant. However, the Board does agree with the City that everyone applying for property tax exemption should go through the exemption process with the City. In this regard all taxpayers would be subject to the same scrutiny. The Respondent provided the Board with a letter inviting the Complainant to meet and provide information for the exemption process. The Complainant failed to take

advantage of this offer.

The Board notes that the Calgary Masonic Temple Ltd. is a non-profit organization that is exempt from income tax in accordance with Section 149 of the Income Tax Act.

DATED AT THE CITY OF CALGARY THIS 30 DAY OF NOVEMBER 2011.

  
**Robert Mowbrey**  
Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C-1 386 pages	Complainant's Disclosure
2. C-2 459 pages	Complainant's Rebuttal Evidence
3. R-1 325 pages	Respondent's Disclosure
4. R-2 2 pages	Respondent's 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.*

**FOR ADMINISTRATIVE USE**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Stand Alone	Sales/Income Exemption/Taxable	Equity/Sales Comparables Copter/Regulations/MGA