



## **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:

***King George Masonic Temple (as represented by AEC Property Tax Solutions),  
COMPLAINANT***

and

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

before:

***M. Axworthy, PRESIDING OFFICER  
R. Cochrane, BOARD MEMBER  
A. Zindler, BOARD 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 2014 Assessment Roll as follows:

**ROLL NUMBER: 201833175 and 081241499**

**LOCATION ADDRESS: 2323 OSBORNE CR SW AND 2425 RICHMOND RD SW**

**FILE NUMBER: 75014 AND 75016**

**ASSESSMENT: \$1,660,000 and \$804,500**

This complaint was heard on 9 and 10 day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *S. Trylinski, Counsel, Municipal Counsellors*
- *B. Soulier, Agent and Witness for the Complainant (AEC Property Tax Solutions)*

Appeared on behalf of the Respondent:

- *J. Young, Assessor (City of Calgary)*
- *D. Satoor, Assessor (City of Calgary)*
- *H. Chan Counsel (City of Calgary)*

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

[1] The Respondent raised the following procedural issues:

- A) It objected to the proposed presentation of a map by the Complainant that was not disclosed in the Complainant's Evidence packages, C1 and C2.
- B) It asserted that the Complainant has included new evidence in its Rebuttal package and is attempting to "split its case".
- C) It objected to the proposal by the Complainant to allow Mr. Bruce Corenblum to speak to his "Will-say" statement, included in the Complainant's Rebuttal package, during the presentation of the Complainant's evidence.

[2] The Complainant made the following requests to vary the procedures of the Board (outlined in the Calgary ARB Policies and Procedural Rules) by:

- D) Asking the Respondent to confirm certain "agreed upon facts" during the presentation of the Complainant's evidence.
- E) Limiting questioning of the Complainant by the Respondent to one member of its three person team and limiting answers to questions by the Complainant to one person of the Respondent's team.

**Position of the Parties on the Procedural Issues**

**Issue A)**

[3] The Respondent stated that the map in question had not been disclosed in C1 or C2, as required by section 8(2) of the Matters Relating to Assessment Complaints Regulation (MRAC) and it should not be allowed.

[4] The Complainant responded that the map that it proposed to use did not introduce new information and would provide a clearer indication for the Board of the relationship between the subject properties at 2425 Richmond RD SW and 2323 Osborne CR SW.

**Issues B) and C)**

[5] The Respondent stated that the Complainant's rebuttal package indicated that Mr. Corenblum would provide oral testimony about the "activities and characteristics about the subject property and its current status", information which the Respondent stated had not been properly disclosed as evidence pursuant to Section 8(2) (a) (i) of MRAC, nor disclosed in the Complainant's rebuttal package "... *in sufficient detail to allow the respondent to respond or rebut the evidence at the hearing*" as per Section 8(2) (c) of MRAC.

[6] The Respondent stated that Mr. Corenblum's "Will-say" statement was included in the Complainant's Rebuttal package and not its evidence package C1, and that Mr. Corenblum should not be allowed to give oral testimony in the evidentiary portion of the hearing.

[7] In response, the Complainant stated that the Municipal Government Act (the Act) and not the Regulations (MRAC) was the "guiding light" on this issue and that the Act states in Section 464(1) that Assessment Review Boards are not bound by the rules of evidence and have the power to determine the admissibility of evidence and that Mr. Corenblum would present "harmless information" about the Activities of the Masons.

**Issue D)**

[8] The Complainant advised the Board that in the interests of an efficient hearing process, it intended to ask the Respondent to confirm certain "agreed upon facts" during the presentation of its evidence.

[9] The Respondent indicated that it was not the normal procedure used by the Calgary Composite Assessment Review Boards (CARBs) and that it would not agree to any "facts" during the presentation of the Complainant's evidence.

**Issue E**

[10] The Complainant asked that the Board direct the Respondent to:

- (i) limit questioning of the Complainant by the Respondent to one member of its team; and
- (ii) limit answering of the Complainant's questions to one member of the Respondent's team

as it was unfair to the Complainant to be questioned by more than one person or have more than one person responding to its questions.

[11] The Respondent replied that the two representatives of the Assessment Business Unit (ABU) had different areas of expertise and that Mr. Chan was their legal counsel and that each should be able to ask and answer questions for that reason.

[12] The Board considered the procedural issues raised and ruled as follows:

**Issue A:** The Board found that the map that the Complainant proposed to present as part of its evidence was not properly disclosed under Section 8(2) (a) (i) of MRAC and would not be admitted as evidence.

**Issue B:** The Board reserved its decision on whether there were materials in the Complainant's Rebuttal package that constituted new evidence. The Board advised that

it would hear the Respondent and the Complainant's specific arguments on this matter at the time of Rebuttal and would assign an appropriate weight to the material in its deliberations.

**Issue C)** The Board determined that Mr. Corenblum would not be allowed to give his rebuttal evidence through oral testimony during the evidence portion of the hearing as per sections 8(2) (a) (i) and 9(2) of MRAC, the evidence had not been properly disclosed to the Respondent.

**Issue D)** With respect to the Complainant's notice to the Board that it intended to ask the Respondent to confirm certain "agreed upon facts" during the presentation of its evidence, the Board advised the Complainant that section 37 of the Calgary ARB Procedures- Revised April 2014, set out the order of conducting hearings as follows:

37. (1). *A complaint hearing shall be conducted in the following order:*

- (a) Introduction and preliminary matters;*
- (b) (i) Presentation of all complainant evidence;*
  - (ii) Respondent questions;*
  - (iii) Board questions;*
- (c) (i) Presentation of all respondent evidence;*
  - (ii) Complainant questions;*
  - (iii) Board questions;*
- (d) (i) Rebuttal evidence of complainant (if any);*
  - (ii) Respondent questions;*
  - (iii) Board questions;*
- (e) Complainant summary of position and argument;*
- (f) Respondent summary of position and argument;*
- (g) Brief reply of complainant (if any);*
- (h) Board conclusion of hearing.*

*(2). Notwithstanding the above, the order of hearing is subject to the Board's discretion.*

While section 37. (2) of the Calgary ARB Procedures allows the Board to change the order of the hearing, the Complainant presented no compelling argument as to why the procedure should be changed and the Respondent strongly objected to the proposed change.

**Issue E)** The Board advised the Complainant that it was common practice for more than one individual to ask and answer questions when parties were represented by more than one individual. The Board could find no reason to change its practice at this hearing.

#### **Property Description:**

[13] File 75014- 2323 Osborne CR SW: This property is located east of Crowchild TR SW and north of Richmond RD SW on two residential lots in the community of Richmond. The first

lot (1/2) contains the Temple building and the second lot (2/2) is an unimproved lot used for surface parking for the Temple. The two lots constitute an assessable land area of 24,606 SF. The subject has been valued using the Cost Approach.

[14] File 75016- 2425 Richmond RD SW: This property is located at 2323 Osborne CR SW, across the lane from the Temple building, and is developed with a surface parking lot to serve the Temple. The total parcel size is 13,915 SF. It is assessed as Land Only.

**Issues:**

[15] The Complainant raised the following issues at this hearing with regard to 2323 Osborne CR SW (File 75014) and 2425 Richmond RD SW (File 75016):

1. Have the subject properties been assessed in excess of their fair and equitable value?
2. Should the subject properties be exempt from property tax under section 362(1) (n) (iii) (B) of The Act and in accordance with the provisions of the Community Organization Property Tax Exemption Regulation (COPTER)?

**Complainant's Requested Value: \$ 396,000 (2323 Osborne CR SW)**  
**\$ 1,000 (2425 Richmond RD SW)**

[16] **Board's Decision:** The Board confirmed the assessments on both properties and finds that the properties are not exempt from taxation.

**Legislative Authority, Requirements and Considerations:**

[17] Under the Act Section 460.1(2) and subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property, other than property described in subsection 460.1 (1)(a).

[18] Section 8 of the Matters Relating to Assessment and Complaints Regulation (MRAC) deals with the disclosure of evidence:

*8(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.*

*(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

*(a) the complainant must, at least 42 days before the hearing date,*

- (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and*

- (ii) *provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;*
- (b) *the respondent must, at least 14 days before the hearing date,*
  - (i) *disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and*
  - (ii) *provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;*
- (c) *the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

[19] Section 9(2) of MRAC states that:

*9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

[ 20] Section 362(1) of the Act has the following provisions with respect to exemptions from taxation for government, churches and other bodies. Section 362(1) (n) (iii) (B) is the relevant section in this case:

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

*(n) property that is*

- (i) owned by a municipality and held by a non-profit organization in an official capacity on behalf of the municipality,*
- (ii) held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,*
- (iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by*
  - (A) the Crown in right of Alberta or Canada, a municipality or any other body that is exempt from taxation under this Division and held by a non-profit organization,*
  - or*
  - (B) by a non-profit organization,*

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

[21] The Board was presented with decisions of Assessment Review Boards. While the Board respects the decisions made by those Boards, it is mindful 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 limited weight to those decisions, unless the issues and

evidence are found to be timely, relevant and materially identical to the subject complaints.

[22] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

### **Position of the Parties**

#### **Complainant's Position:**

[23] Counsel for the Complainant stated that there were two legislative tests that should be used to determine if a property should be exempt from taxation: section 362(n) (ii) and (iii) of the Act and the applicable regulations under COPTER. Counsel directed the Board to the Complainant's two evidence packages C1 and C2, indicating that it did not plan to take the Board through the entire two packages.

[24] Counsel for the Complainant called B. Soulier of AEC Property Tax Solutions as an expert witness. B. Soulier testified that after the Complainant had disclosed its evidence, the Assessment Business Unit asked the Complainant to file an application for an exemption from taxation. The application was filed in late April/early May but the Complainant had not received a response from the ABU.

[25] B. Soulier stated that the two subject properties are designated Direct Control (DC) under The City's Land Use Bylaw and that the DC bylaw limited the use of the property to a church, a Masonic Temple or meetings of the Calgary Historical Society.

[26] B. Soulier further testified that the Direct Control Bylaw also stipulates that a minimum required amount of parking stalls must be provided for the site [C1, p. 2]. The required stalls are located on the property at 2425 Richmond RD SW and on the two lots across the lane to the rear of 2323 Osborne CR SW [C1, p. 6 and C2, pp. 16 and 17]. B. Soulier argued that the use and parking restrictions in the DC bylaw affected the value of the property.

[27] The Complainant's evidence package notes that the assessment of the premises was based on the Cost Approach using the Marshall and Swift methodology for improvement calculations. The Complainant argued that this approach does not take into account the restrictions of the DC Bylaw nor the "...decreased market value that results due to the site and building being older as well as the odd configuration and poor condition of the building." [C1, p. 2].

[28] Regarding the issue of exemption from taxation as per section 362(1) (n) of the Act, the Complainant's evidence package states that the subject properties are owned by the King George Masonic Temple, "...a non-profit organization that is a registered charitable organization in Alberta." [C1, p. 3 and C2, p. 3]. The Calgary Masonic Temple had received tax exemption status in previous years at its former location at 330 12 AV SW as per Board Order MGB 095/10 [C-1, pp. 10-24].

[29] The Complaint stated that the property owner was claiming an exemption because it met the legislative tests under the Act contained in sections 362(1) (n) (ii) and (iii) and sections 1(1) (b), 7, 10 and 15 [C1, pp.6-8] because use was not restricted and there was no fee charged.

[30] The Complainant further stated that even if the Board determined that the property was not entitled to an exemption, the assessed value of the properties was too high because of the use and parking restrictions of the DC bylaw

[31] During questioning by the Respondent, B. Soulier acknowledged that a copy of the applicable Direct Control Bylaw was not included in evidence package C1 or C2.

[32] During questioning by the Respondent, B. Soulier stated that information on sales of similarly restricted property was not provided and that the requested value of the property at 2323 Osborne CR SW was based on the assessed value of the improvements, without land and the requested value for the property at 2425 Richmond RD SW was the nominal value applied in the 2013 assessment.

#### **Respondent's Position:**

[33] The Respondent asked the Board for a preliminary ruling on whether the Complainant had "met onus" in either file 75014 or 75016 and stated that it did not wish to enter its Assessment Brief into evidence, pending the Board's ruling.

[34] In support of its request for a preliminary ruling on this issue, the Respondent stated that it was the responsibility of the Complainant to provide at least some reasonable analysis to back up its requested value for the subject properties and to provide evidence to substantiate its claim that the property meets the legislative tests in the Act and COPTER regarding exemption from taxation.

#### **Board's Reasons for Decision:**

**Issue #1:** Has the subject property been assessed in excess of its fair and equitable value?

[35] The Board finds that the Complainant has not provided evidence to support its requested assessed values for the subject properties.

[36] The Complainant did not include in evidence a copy of the applicable DC Bylaw that the Complainant alleged reduced the value of the subject properties. Therefore, the Board could find no evidence to support the Complainant's assertion.

[37] The Complainant did not provide any sales comparables for properties with similar alleged restrictions to support its requested value.

[38] The Complainant did not provide any evidence to support its request that the assessed value of the property at 2323 Osborne CR SW be based on the value of the improvements, without land, nor evidence to support its request that the property at 2425 Richmond RD SW should be based on a nominal value of last year's assessment.

**Issue #2:** Should the subject property be exempt from property tax under section 362(1) (n) (iii) (B) of the Act and in accordance with the provisions of COPTER?

[39] The Board finds no evidence to support the Complainant's request that the subject properties be exempt from taxation.

[40] The Board finds that Section 362(1) (n) (iii) (B) of the Act is the applicable test to determine if a property of this nature is exempt from taxation. According to this section of the Act, the property must be used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by a non-profit organization that meets the qualifications and conditions in the regulations (COPTER).



[41] No evidence was provided by the Complainant to support its claim that the subject properties are used for charitable or benevolent purposes, or that the King George Masonic Lodge is a non-profit organization.

DATED AT THE CITY OF CALGARY THIS 9<sup>th</sup> DAY OF July 2014.

A handwritten signature in cursive script, appearing to read "M. Axworthy", written over a horizontal line.

M. Axworthy

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure File 75014
2. C2	Complainant Disclosure File 75016

*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 Only**

<b>Municipal Government Board use only: Decision Identifier Codes</b>				
<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Other	Specialty	COPTER	