

**NOTICE OF DECISION      NO. 0098 08/12**

Edwin A Bridges, Q.C. of Snyder & Associates,  
Barristers and Solicitors  
2500, 10123 - 99 Street  
Edmonton, AB T5J 3H1

The City of Edmonton  
  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (The Board) from a hearing held on May 15, 2012, respecting a complaint for:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
1102367	20303 Meridian Street NE	NW 16-54-23-4	\$374,500	Annual New	2012

**Before:**

Ted Sadlowski, Presiding Officer  
Jasbeer Singh, Board Member  
Mary Sheldon, Board Member

**Board Officer:**

Rhoda Lemphers

**Persons Appearing on behalf of Complainant:**

Edwin A Bridges, Q.C. of Snyder & Associates, Barristers and Solicitors  
Ernest Skakun, Council of Ukrainian Orthodox Churches

**Persons Appearing on behalf of Respondent:**

Collin Hindman, Assessor, City of Edmonton  
Moreen Skarsen, Assessor, City of Edmonton  
Steve Lutes, Lawyer, City of Edmonton

## **PROCEDURAL MATTERS**

[1] Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. The Board members indicated they had no bias in the matter before them.

[2] The parties intending to give evidence were sworn in.

## **PRELIMINARY MATTERS**

[3] The Respondent advised the Board that a storage building that was included in error had been removed from the subject property assessment. Due to the resulting data correction, the City of Edmonton put forward a recommendation of \$181,500. The Complainant indicated his willingness to accept the same.

## **BACKGROUND**

[4] The subject is St. Stephen's Cemetery located at 20303 Meridian Street NW, Edmonton, in the Rural North-East Horse Hill neighbourhood. The property is comprised of a 3,425,055.391 square foot land area. 90% of the subject property is categorized as a cemetery with Land Use Code (LUC) 460 and 10% is farm land with LUC 832. The cemetery portion has a 1,486 square foot improvement that was built in 2001 and is used as an administration building for the cemetery.

## **ISSUE(S)**

[5] Should the cemetery administration building be exempt from taxation?

## **LEGISLATION**

### ***Municipal Government Act, RSA 2000, c M-26***

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

(1) property consisting of any of the following:

(i) a parcel of land, to a maximum of 10 hectares, that is used as a cemetery as defined in the *Cemeteries Act*;

(ii) any additional land that has been conveyed by the owner of the cemetery to individuals to be used as burial sites;

(iii) any improvement on land described in subclause (i) or (ii) that is used for burial purposes;

**s 367** A property may contain one or more parts that are exempt from taxation under this Division, but the taxes that are imposed against the taxable part of the property under this Division are recoverable against the entire property.

**s 368(1)** An exempt property or part of an exempt property becomes taxable if

- (a) the use of the property changes to one that does not qualify for the exemption, or
- (b) the occupant of the property changes to one who does not qualify for the exemption.
- (2) A taxable property or part of a taxable property becomes exempt if
  - (a) the use of the property changes to one that qualifies for the exemption, or
  - (b) the occupant of the property changes to one who qualifies for the exemption.
- (3) If the taxable status of property changes, a tax imposed in respect of it must be prorated so that the tax is payable only for the part of the year in which the property, or part of it, is not exempt.

**s 467(1)** An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

**s 467(3)** An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- a) the valuation and other standards set out in the regulations,
- b) the procedures set out in the regulations, and
- c) the assessments of similar property or businesses in the same municipality.

## **POSITION OF THE COMPLAINANT**

[6] The Complainant presented a 15 page brief (Exhibit C-1) comprised of reasons for the complaint, previous years' notices of assessment, site plans, and relevant extracts from legislation (MGA). A one-page print-out of e-mails exchanged between the Respondent and the Complainant was admitted as Exhibit C-2.

[7] The Complainant argued that the subject administration building is used entirely for burial purposes and ought to be exempt from any taxes pursuant to MGA section 362 (R-1, page 4, paragraph 5).

[8] The Complainant cited an earlier Board Order (MGB 082/06) that ruled, pursuant to MGA section 362, that the parts of office buildings used for the administration and maintenance of cemeteries were exempt from taxation (R-1, page 54).

[9] The Complainant also argued that no part of the subject administrative building was used for commercial activity such as the display and sale of headstones. The only sales activity carried out in the premises related to the sale of burial plots. The Complainant stated that, as an integral part of the burial process, this activity should be exempt from taxation under the MGA. The Complainant emphasized that the administration building had no purpose beyond activities in conjunction with burial purposes.

[10] The Complainant added that the subject improvement was accorded tax exempt status by the City of Edmonton until the 2010 assessment year, when the tax status was erroneously changed even though the use of the building had not changed at all.

[11] The Complainant requests that the Board restore the '100% tax-exempt' status for the cemetery administration building, as it is integral to the operation and the maintenance of the cemetery.

## **POSITION OF THE RESPONDENT**

[12] The Respondent presented a 112-page document to the Board, including an assessment brief, a Law & Legislation brief and relevant previous Board Orders.

[13] The Respondent stated that sections 367 and 368 of MGA deal with the apportionment of exemption for space and time used (R-1, page 27).

[14] The Respondent further stated that they had attempted to carry out an inspection of the property and take measurements in order to establish the amount of space and time the administration building was used for different purposes, but all such attempts had been unsuccessful.

[15] In response to a request from the Respondent, the Complainant had provided a list of 5 'sole current uses' of the administration building (C-2). Relying on this list of uses, the Respondent concluded that only 3 of the 5 identified uses were directly related to burial purposes and thus were 'exempt'. This resulted in the Respondent assigning 'non-exempt' status to the remaining 40% (2 out of 5 uses) of the administration building (C-2).

[16] Since no time measurements were available, the decision to apportion 'exempt' status was based on the nature of the uses made of the administration building.

[17] The Respondent advised the Board that, beginning with the 2010 assessment year, they reviewed cemeteries in the City of Edmonton with a view to establish a correct apportionment of the extent of exempt status in respect of 'administrative' buildings of all cemeteries.

[18] The Respondent summarized the issue as follows: pursuant to MGA section 362(1)(l)(iii), is the 'exemption status' applicable to the administration building, and is the administration building a part of the burial process and, if so, to what extent?

[19] The Respondent argued that the Complainant had failed to substantiate their claim for full exemption. The Respondent relied entirely on the information provided by the Complainant.

[20] The Respondent requested that the Board accept the adjusted 2012 assessment of \$181,500 for the subject as agreed to by the parties. Further, the Respondent requested that the 60% exempt status for the administration building be confirmed as fair and equitable (R-1, pages 18 & 64).

## **DECISION**

[21] The decision of the Board is:

- i. To confirm the recommended 2012 assessment of \$181,500 as fair and equitable.
- ii. To grant the 'fully exempt' status to the administration building, as long as it is utilized entirely for the exempt purposes.

Roll Number	Original Assessment	New Assessment
1102367	\$374,500	\$181,500

## **REASONS FOR THE DECISION**

[22] The Board was in agreement with the recommended reduced 2012 assessment of \$181,500 following the subject property data correction that resulted in the removal of an erroneously added storage facility from the subject property assessment roll. This was also acceptable to the Complainant.

[23] The Board was persuaded by the Complainant's argument that the subject administration building was used only to support the cemetery operations and there was no display area or sale of goods or services not directly related with the burial process.

[24] The Board was not persuaded by the Respondent's simplistic approach in apportioning the exemption status on the basis of a proportion of the identified functions or activities deemed exempt or otherwise, without regard to extent of space or time allocated to such activities (C-2).

[25] The Board did not assign significant weight to the Respondent's interpretation of a previous Board Order (MGB 082/06) regarding the 'commercial aspect of the cemetery' (R-1, page 54).

[26] The Board did not accept the Respondent's contention that the sale of burial plots is a commercial activity that is not directly related to the burial process. The Board believes that no burial could take place in the subject cemetery without someone purchasing a plot prior to the burial. The sale or purchase of burial plots is, therefore, found to be an essential and integral part of the burial process.

## **DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 8<sup>th</sup> day of June, 2012, at the City of Edmonton, in the Province of Alberta.

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Ted Sadlowski, Presiding Officer

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*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.*

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cc: C. of Ukrain. Orthodox Chur.