

NOTICE OF DECISION NO. 0098 938/11

ALTUS GROUP
780-10180 101 ST NW
EDMONTON, AB T5J 3S4

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 (CARB) from a hearing held on May 22, 2012, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9984373	1704 88 Street SW	Plan: 0023924 Block: 4 Lot: 1	\$5,446,000	Annual New	2011

Before:

Peter Irwin, Presiding Officer
Taras Luciw, Board Member
Tom Eapen, Board Member

Board Officer:

Rhoda Lemphers

Persons Appearing on behalf of Complainant:

Chris Buchanan, Altus Group
Christine Van Staden, Altus Group

Persons Appearing on behalf of Respondent:

Moreen Skarsen, Assessor, City of Edmonton
Tanya Smith, Legal Counsel, City of Edmonton

PRELIMINARY MATTERS

[1] Upon questioning by the Board, neither party expressed objection to the composition of the Board. The Board members stated that they had no bias with respect to the file.

BACKGROUND

[2] The subject property is located in the Summerside subdivision in the City of Edmonton. It has a surface area of 41.40 acres, of which 29.72 acres are covered by water. The property includes a clubhouse, tennis courts, a basketball court, parkland, a man-made lake and a beach. The building has a gross building area of 5,932 square feet. The 2011 assessment is \$5,446,000 and the exemption is 0%.

ISSUES

[3] Is the subject property exempt from taxation?

[4] In order to make a determination on the exemption issue, the Board deems it appropriate to address the following sub-issues:

Per Municipal Government Act (MGA) and Community Organization Property Tax Exemption Regulation (COPTER),

1. Is the subject property held by a non-profit organization? (*MGA s 362(1)(n)(ii), COPTER ss 6, 7 and 9*)
2. Is the subject property used solely for community games, sports, athletics or recreation? (*MGA s 362(1)(n)(ii), COPTER s 9(1)(b)*)
3. Is the subject property held for the benefit of the general public? (*MGA s 362(1)(n)(ii), COPTER s 1(1)(c)*)
4. Is the subject property used in the operation of a professional sports franchise? (*COPTER s 1(1)(d) and 9(1)(a)*)
5. Is the subject property used by persons under 18 years of age at least 60% of the time? (*COPTER s 4(2) and 9(1)(b)*)
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 s 7(1)(a)*)
 - b. the ownership of property, (*COPTER s 7(1)(b)*)
 - c. the requirement to pay fees of any kind, other than minor entrance or service fees, or (*COPTER s 7(1)(c)*)
 - d. the requirement to become a member of an organization. (*COPTER s 7(1)(d)*)
7. Is the subject property held by and used in connection with a community association as defined in the regulations? (*MGA s 362(1)(v), COPTER s 12(1)(c)*)

8. Has the requirement for an application for an exemption in accordance with the Regulation been satisfied? (*COPTER* s 16(1)(a)(i))

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

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,
 - (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,

- (iv) held by a non-profit organization and used to provide senior citizens with lodge accommodation as defined in the *Alberta Housing Act*, or
- (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, 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 Alta. Reg. 281/1998

Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Municipal Government Act*;
- (b) “charitable or benevolent purpose” means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;
- (c) “general public” means pertaining to the general community, rather than a group with limited membership or a group of business associates;

(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.

(3) The definitions in sections 1 and 284 of the Act apply to this Regulation.

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 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.

Holding property

5 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, 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 association is the owner of the property and the property is not subject to a lease, licence or permit, or
- (b) the organization, society or association holds the property under 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 requires 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

- (a) the organization or association is a society incorporated under the *Societies Act*, or
- (b) the organization or association is
 - (i) a 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.

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.

(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.

(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.

Part 2

Qualifications for Exemptions Under Section 362(1)(n)(ii) to (v)

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.

(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).

(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)(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, 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.

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:

- (a) property to the extent that it is used in the operation of a professional sports franchise;
- (b) property 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;
- (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.

(1.1) Notwithstanding subsection (1)(c), property held by a community association referred to in that provision is exempt from taxation under section 362(1)(n)(v) of the Act where that community association was a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues on January 1, 1999 but cancelled its membership after that date.

(1.2) Subsection (1.1) applies with respect to 2004 and subsequent years.

(2) Property is not exempt from taxation under section 362(1)(n)(v) 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).

(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.

Day cares, museums and other facilities

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

- (a) a facility used for sports or recreation to the extent that the facility is not used in the operation of a professional sports franchise

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

- (a) the non-profit organization makes an application for an exemption to the municipality by September 30 of the year preceding the taxation year and supplies the municipality with the following by November 30 of the year preceding the taxation year:
 - (i) any information the municipality requires to determine if the organization meets the conditions for the exemption, and
 - (ii) a description of any retail commercial areas in the facility,
- (b) the facility on the property is one of the facilities described in section 15 and the non-profit organization operates the facility on a non-profit basis,
- (c) the funds of the non-profit organization are chiefly used for the purposes of the organization and not for the benefit of the organization's directors and employees,
- (d) the property is not disqualified by virtue of subsection (2) or (3), and

(e) the requirements of subsections (4) and (5), if applicable, are met.

(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.

(3) Property referred to in section 15(d) or (g) to (i) is not exempt from taxation if an individual is not permitted to use the property because of the individual's race, culture, ethnic origin or religious belief.

POSITION OF THE COMPLAINANT

[5] The Complainant presented a 97-page disclosure package (Exhibit C-1) to the Board, including,

- a 28-page main submission consisting of a schedule of issues, a subject property map, a site aerial photo, numerous photos of the building, the lake, and the various improvements and facilities, a summary of evidence and testimony, legislative decision-making flowcharts on exemption matters, park and facility usage statistics, and the request that the subject property be 100% exempt from all levies, and
- 69 pages of appendices (B to P) which included legislative excerpts, Municipal Government Board (MGB) Board Orders, an Alberta Queen's Bench decision, land title certificate, information (program guides) on the Summerside Residents Association programs and City of Edmonton programs, and a Summerside Residents Association brochure with its own attendant appendices

[6] The Complainant stated that in property developments such as Summerside, the developer will typically build community facilities along with the new homes. In these circumstances, the developer will later transfer title of the buildings and land to the community for a total nominal consideration of \$1.00. The Complainant stated that Summerside is not fully built out yet.

[7] The Complainant reviewed the Summerside Residents Association Brochure, dated July 2000, (Ex. C-1, Appendix M) which stated that Carma Developers Ltd. ("Carma") was developing a new residential community in the south portion of Edmonton known generally as Summerside.

[8] The brochure states the following key points:

- It is estimated that there will be approximately 3500 to 4000 residential units in Summerside (both single family and multi-family homes) as well as up to 56 acres of developable commercial lands.
- Carma will also be developing certain amenities for the benefit of all residents which will be owned and operated by a private residents' association.
- Carma will operate, maintain and manage the Summerside Amenities until it has fully transferred the overall management of the Association.

- To pay for the operation of the Association, each property will be subject to an annual fee. The fee schedule anticipates fees ranging from \$250 to \$600 per year, depending on the type of residential lot. The fee will be enforceable by way of an encumbrance on each title.

[9] The Complainant stated that, with respect to programs offered and fees payable, the Residents Association operates similarly to that of the City of Edmonton's leisure centres. Appendix P of Exhibit C-1 was included in the Complainant's disclosure package to establish the similarities between the Summerside Residents Association Programs and fees and those of the City.

[10] The Complainant suggested that the subject property qualifies for exemption from property tax. She identified four "hurdles" in *MGA* s 362(1)(n)(ii), which states, "property that is held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public" is exempt from taxation.

[11] The Complainant stated the hurdles as follows:

1. meeting the condition of the term "held by"
2. meeting the condition of non-profit organization,
3. meeting the use condition of community recreation, and
4. meeting the benefit of the general public condition.

[12] In support of the first hurdle ("Held By"), the Complainant referred to Exhibit C-1, Appendix N, which confirms that the title of the property is held by the Summerside Residents Association.

[13] In support of the second hurdle ("Non-Profit Organization"), the Complainant referred to the Lake Summerside Association Brochure, which includes the Articles of Incorporation in Schedule C (Exhibit C-1, Appendix M).

[14] In support of the third hurdle ("Recreation Use"), the Complainant referred to the Lake Summerside Program Guide which outlines the programs offered at the facility (Exhibit C-1, Appendix L). The Complainant also referred to a table that showed facility usage by year and by month for 2010 and 2011. In 2010, for example, the amenities had 23,800 total users, including 11,978 guests. For park usage only there were 23,802 users in 2010. At page 21, further usage statistics were presented, showing that 144 programs were offered in 2010, along with 196 hall rentals and 211 outdoor bookings.

[15] In support of the final hurdle ("General Public"), the Complainant stated that the facilities were used by residents as well as people outside the community of Summerside, since the 23,800 visitors included 11,978 guests, slightly over 50% of the total usage.

[16] The Complainant also provided a Program Guide chart to illustrate that 65% of the courses offered are designed for people under the age of 18. The chart indicated that non-residents are permitted in all 26 programs and that there is one fee for residents and a slightly higher fee for non-residents (Exhibit C-1, page 22).

[17] The Complainant's disclosure package included a "Community Profile" of Summerside (Exhibit C-1, Appendix K) which contained 12 tables of statistics from the 2005 Municipal

Census (the most recent that the Complainant had available). The Complainant stated that 27% of the population is under the age of 18 and that more than 65% of the programs are geared for that age group.

[18] Upon questioning, the Complainant confirmed that the assessment of the subject property is not at issue, and that only the matter of the subject property's tax status is before the Board. The Complainant confirmed that Carma had physical control of the subject property at the Valuation Date of July 1, 2010 and up until the transfer date of March 10, 2011. The Complainant submitted that Carma held the subject property in trust for the Residents Association until the transfer.

[19] Upon questioning, the Complainant stated that the Program Guide is on the Residents Association's website, but is only physically delivered to residents and is not promoted to those living outside of Summerside. Of the 439 people registered in programs in 2010, the Complainant was unable to state how many were non-residents.

[20] Upon questioning, the Complainant stated that the subject property is fenced along the east side (88th Street), and along the northwest side (Summerside Drive).

POSITION OF THE RESPONDENT

[21] The Respondent presented the Board with two packages:

- a 135-page disclosure package including a legal brief respecting property tax exemption and the City's 2011 Property Assessment Law and Legislation Brief, an appraisal document on Special-Use Properties and Cost Approach (Exhibit R-1), and
- a 39-page package containing an Amendment to *COPPER* (effective January 1, 2012), CARB decision 0046-2257/2011 and CARB decision 0046-0980/2010 (Exhibit R-2).

[22] The Respondent brought to the attention of the Board a blank City of Edmonton form entitled "Request for Information FOR PROPERTY TAX EXEMPTION UNDER THE *MUNICIPAL GOVERNMENT ACT* SECTION 362(1)(n) Non-Profit Organizations". The form states: "Under Alberta Regulation 281/98 (16)(1)(a) an application must be made to the municipality by September 30 of the year preceding the taxation year and any additional information requested by the municipality must be supplied by November 30 in order for an exemption to be considered." The Respondent requested the Exemption Percentage remain at 0% for the subject property based on the fact that the City did not receive a completed Request for Information (RFI) for an exempt organization at the subject property.

[23] The Respondent noted that the subject property was owned by the developer, Carma, until March 10, 2011, at which time title transferred to the Summerside Residents Association (pages 43 to 56 Exhibit R-1).

[24] The Respondent noted that an RFI had been sent to Altus for Summerside Resident Association use in 2009, but a completed form has not been returned.

[25] The Respondent noted that the City also requires copies of documents such as:

- Certificate of Incorporation
- Memorandum of Association/Articles of Association for a non-profit company
- Registered Objects
- Registered Bylaws
- Most current financial statements
- Land Title Certificate
- Any of the organization's brochures, newsletters, etc.

[26] The Respondent noted that, in the absence of the Certificate of Incorporation of the Summerside Residents Association, the date at which the Association became a non-profit organization is unknown.

[27] The Respondent's disclosure included 37 photographs taken around the subject property. Picture #35 shows a large Summerside Residents Association Rules & Regulations sign which states that the amenities, including the lake and associated facilities, parklands, walkways and lake access are for the exclusive use of Members of the Association and their guests.

[28] The Respondent also drew the Board's attention to the Summerside Residents Association website featuring the statement that its amenities are restricted to residents of the community of Summerside. The Rules and Regulations page states "The Summerside amenities, including the lake and associated facilities, parklands, walkways, and lake access walkways are for the exclusive use of Members of the Members of the Summerside Residents Association and their guests." The Respondent added that an attempt to sign up for a course was unsuccessful because a username and password are required to access these services.

[29] Three newspaper articles about residents associations were included in Ex. C-1. These articles included some emphasis on the associations' privacy and access limited to residents only.

DECISION

[30] The Board finds that the Summerside Residents Association does not qualify for tax exemption status through the *MGA* or *COPPER*. The subject property assessment of \$5,446,000 is confirmed as 100% taxable for 2011.

REASONS FOR THE DECISION

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

[31] The Board finds that the subject property is not owned by a non-profit organization.

[32] The Board finds that the subject property was held by the Summerside Residents Association as of March 10, 2011, as confirmed by the Certificate of Title. In the absence of Incorporation documents, however, the Board was not able to conclude that the Summerside Residents Association was incorporated as a non-profit organization. No financial statements were presented to the Board and no evidence was presented to show that the owner of the subject property on the Valuation Date of July 1, 2010 (Carma) was a non-profit organization.

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

[33] **The Board finds that the subject property is used solely for community games, sports, athletics or recreation.**

[34] Based on the Program Guides, statistical tables, and photographs presented as evidence, the Board finds that the subject property is used solely for community games, sports, athletics, or recreation.

3. Is the subject property held for the benefit of the general public?

[35] **The Board finds that the subject property is not held for the benefit of the general public.**

[36] The Board reviewed the Complainant's evidence found in Exhibit C-1, Appendix M, Schedule C, clause O, page 25 and compared it with the requirements set out in *MGA* section 362(1)(n)(ii), and attendant regulation *COPTER* section 1(1)(c) and finds that the subject property is not held for the benefit of the general public, but rather is held primarily for the benefit of the Summerside Residents Association Members and Guests. Per *COPTER* s 1(1)(c), "general public means pertaining to the general community, rather than a group with limited membership or a group of business associates."

[37] The Board notes in the Complainant's Executive Summary that the subject property is a "Clubs – Private" type of property (Ex. C-1, page 4). Further, the signage on the property states that it is for the exclusive use of Members and their guests. The Board concludes that the subject property is only open to the general public on rare occasions.

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

[38] **The Board finds that the subject property is not used in the operation of a professional sports franchise.**

[39] The Board finds no evidence to suggest that the Residents Association operates a professional sports franchise as defined in *COPTER* sections 1(1)(d) and 9(1)(a). The facilities are not used in the operation of a professional sports franchise.

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

[40] **The Board finds insufficient evidence to determine whether or not the subject property is used by persons under the age of 18 at least 60% of the time.**

[41] While 65% of the Summerside Residents Association's programs are designed for persons under the age of 18, the evidence stated that more than half of the users are under 18. The Board finds this evidence inconclusive. Similarly, with the attendance of 4,871 individuals at hall rental events, it was unclear whether these rentals were used by persons under 18 years of age for 60% of the time, although 130 of the 196 hall bookings were for children's birthday parties.

[42] The Board also notes a possible discrepancy in the labeling of the overall statistics in 2010 with 23,802 users of the park only and 23,800 total users of the facility, including guests. The Municipal Census data provided was also not sufficiently compelling, as it was from 2005 when there were only 1,292 people in Summerside. It also did not describe the exact boundaries of the census area.

6(a) Is the subject property restricted greater than 30% of the operating time on the basis of race, culture, ethnic origin or religious belief?

[43] **The Board finds that the subject property is not restricted on the basis of race, culture, ethnic origin or religious belief.**

[44] The Board finds no evidence of restrictions on use of the subject property based on race, culture, ethnic origin, or religious belief, per *COPTER* 7(1)(a).

6(b) Is the subject property restricted greater than 30% of the time on the basis of the ownership of the property?

[45] **The Board finds that the subject property is restricted based on the ownership of property.**

[46] The Board noted in the Summerside Residents Association brochure (Ex. C-1, Appendix M, at page 2), “The owners of single family and multi-family residential lots (including condominium units), multi-family rental projects and commercial developments within the Summerside Lands, are all automatically members of, and are required to remain members of, the Association and will be responsible for the timely payment of membership fees to the Association ...”.

[47] R-1, page 63, made it clear to the Board that membership or being a guest of a member is a requirement to gain access to the “Summerside Amenities”.

[48] C-1, Appendix M, Schedule C shows the Articles of Association of Summerside Residents Association, which identifies the categories of membership, including “Family Member”, “Homeowner Member” and “Rental Member”. Each of these membership categories includes some requirement of ownership of property within the subject area. The possibility of being a “Tenant Member” does not require ownership, yet it remains that tenants’ access is dependent on the provision of access by the relevant “Homeowner Member”. This confirmed to the Board that access to the subject property is restricted based on the ownership of property.

6(c) Is the subject property restricted more than 30% of the time by the requirement to pay fees of any kind, other than minor entrance or service fees?

[49] **The Board finds that the subject property is restricted based on the requirement to pay fees other than minor entrance or service fees.**

[50] Based on the evidence presented by the Complainant (the Residents Association’s brochure), the Board finds that to be a member of the Summerside Residents Association, an annual fee had to be paid on behalf of any given property within the boundaries of the Summerside Lands. The fees anticipated in 2000 range from \$250 to \$600 per year, which the Board did not regard as a nominal sum. The payment of annual fees would be secured by an

encumbrance on each titled property in the Summerside Lands. A member's access to and use of the Summerside amenities would be suspended for default of payment of any fees. Clearly, the fee payment is a requirement in order to access the subject property.

6(d) Is the subject property restricted more than 30% of the time by the requirement to become a member of an organization?

[51] The Board finds that the subject property is restricted on the basis of the requirement to become a member of an organization.

[52] The evidence was clear to the Board that to gain access to the subject property, one must be a Member or a guest of a Member. Owners of residential lots are automatically members and are required to remain members and be responsible for the timely payment of membership fees to the Association (Ex. C-1, Appendix M, page 5). The Board concludes that any person could not walk in off the street and use the facilities without producing a membership card or coming as a guest of a member. The Association's Rules and Regulations also include a reference to a Security Guard, whose duties are to enforce the Rules and Regulations and to protect the property of the Association.

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

[53] The Board finds that the subject property is not held by and used in conjunction with a community association as exempted in MGA, section 362(1)(v) and defined in COPTER 1(2).

[54] Per *COPTER*, "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 the area or enhancing the programs, public facilities or services provided to the residents of the area, or (b) providing non-profit sporting, educational or other activities to the residents of the area."

[55] Community Associations and Residents' Associations have similarities, as noted in the Complainant's disclosure, page 17. However, these also have fundamental differences. In the Board's view, the most significant difference in the case of the Summerside Residents Association is that membership is mandatory, not voluntary. The fees are mandatory for property owners, enforceable by encumbrances on individual property owners' titles.

8. Has the requirement for an application for an exemption in accordance with the Regulation been satisfied?

[56] The Board finds that the requirements for making an application for exemption has not been met.

[57] Under "Conditions for exemption" s 16(1)(a) of *COPTER* it is clear that a non-profit organization is required to make an application for an exemption by September 30 of the year preceding the taxation year. The organization must also supply the municipality with any information the municipality requires to determine if the organization meets the condition. The Respondent presented evidence that the Complainant was aware of the requirement, based on

emails exchanged in 2009, but the City has never received an application from them (Exhibit R-1, pages 41 & 42).

[58] In conclusion, the Board finds that a number of the legislative tests for property tax exemption have not been met in this case.

Dated this 5th day of June, 2012, at the City of Edmonton, in the Province of Alberta.

Peter Irwin, Presiding Officer

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.

cc: SUMMERSIDE RESIDENTS ASSOCIATION