

Edmonton Composite Assessment Review Board

Citation: Altus Group v The City of Edmonton, 2012 ECARB 1304

Assessment Roll Number: 9984373
Municipal Address: 1704 88 Street SW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Altus Group

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Peter Irwin, Presiding Officer
Brian Carbol, Board Member
John Braim, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members indicated they had no bias on this 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, parkland, a man-made lake, a children's playground and a beach. The building has a gross building area of 5,932 square feet. The 2012 assessment is \$5,446,000 and the exemption is 0%.

Issue(s)

[3] Is the subject property exempt from taxation?

[4] In order to make a decision on the exemption issue, the Board examined the following sub-issues:

[5] 1. Does the Summerside Residents Association meet the requirements for the definition of a Residents Association as outlined in the Community Organizations Property Tax Exemption Regulation (COPTER) s.13(e)(1), specifically:

a) Operates as a Non-profit organization?

- b) Requires membership for residential property owners in a specific development area?
- c) Secures its membership fees by a caveat or encumbrance on each residential property title?
- d) Is established for the purpose of managing and maintaining the common property, facilities and amenities of the development area for the benefit of the residents of the development area?
- e) Is established for the purpose of enhancing the quality of life for residents of the development area or enhancing the programs, public facilities, or services provided to the residents of the development area?
- f) Is established for the purpose of providing non-profit, sporting, educational, social, recreational or other activities to residents of the development area?

[6] 2. Does the Summerside Residents Association meet the requirements for tax exempt status under (COPTER) s.14.1(2), specifically:

- a) Is the subject property used in the operation of a professional sports franchise?
- b) Is the subject property for more than 40% of the time that it is in use, the majority of those participating in the activities held on the property are 18 years of age or older?

[7] 3. Is the subject property restricted more than 30% of the time under (COPTER) Section 7(1) on the basis of:

- a) Race, culture, ethnic origin or religious belief?
- b) Ownership of property?
- c) The requirement to pay a fee other than a minor service or entry fee?
- d) The requirement to become a member of an organization?

[8] Are any of the above restrictions in place for safety and liability reasons or to avoid contravention of the law? (COPTER section 7(3))

Legislation

[9] The *Municipal Government Act* reads:

Municipal Government Act, RSA 2000, c M-26

s 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

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.

s 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,

The Community Organization Property Tax Exemption Regulation reads:

Community Organization Property Tax Exemption Regulation [AR 281/1998]

s. 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.

s. 13(e.1) "residents association" means a non-profit organization that requires membership for residential property owners in a specific development area, that secures its membership fees by a caveat or encumbrance on each residential property title and that is established for the purpose of

(i) managing and maintaining the common property, facilities and amenities of the development area for the benefit of the residents of the development area,

(ii) enhancing the quality of life for residents of the development area or enhancing the programs, public facilities or services provided to the residents of the development area, or

(iii) providing non-profit sporting, educational, social, recreational or other activities to the residents of the development area.

s. 14.1(1) Property that is owned and held by and used in connection with a residents association is exempt from taxation.

(2) Despite subsection (1), the following property owned and held by and used in connection with a residents association is not exempt from taxation under section 362(1)(n) 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 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) For the purposes of subsection (2) (c), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.

Position of the Complainant

[10] The Complainant maintained that the subject property should be 100% tax exempt.

[11] The Complainant argued that the amendments to COPTER were intended to exempt Residents Associations from taxation. In support of this position the Complainant provided evidence from Hansard (C-1, pages 37-62), a copy of a power point presentation by the Government of Alberta, (C-1, pages 63-65), correspondence between Harvey Fairfield, City Assessor, City of Calgary and Steve White, Executive Director, Assessment Services, Government of Alberta. The Complainant specifically noted that Mr. White indicated that “a residents association would only be considered as restricting use if they do not permit use to all residents within the development area.”

[12] The Complainant argued that the regulation should be interpreted in the broad sense and cited a Supreme Court of Canada case that “only a reasonable doubt not resolved by the ordinary rules of interpretation, will be settled by recourse to the residual presumption in favour of the taxpayer”. (C-1, page 12)

[13] The Complainant submits that the correct way to interpret the section 7 restrictions is to consider whether use is restricted between members that live within the development area. Following this interpretation, if use was restricted between members, then the property would no longer qualify for an exemption (C-1, page 15). The Complainant maintained that no such restriction exists.

[14] The Complainant provided a flow chart to illustrate that the subject property successfully meets a number of legislative tests concluding that the subject property should be tax exempt. (C-1, pages 16, 17). Supporting evidence was provided in the Appendix of document C-1 for the tests in the chart including Articles of Incorporation, programming schedules,

Articles of Association, encumbrances showing minor fee, and fee schedules for City of Edmonton recreational facilities.

[15] Regarding the Summerside Residents Association as being of benefit to the general public, the Complainant's position is that not only are there opportunities for anyone in the City to use the subject properties, the population of the community is larger than most towns.

[16] Regarding the "general community", the position of the Complainant is that a neighbourhood is comprised of several thousand people so, is not restricted in the sense meant by the legislation. The Complainant added that this position is supported by MGB Order 076/10 (C-1, page 18).

[17] The Complainant further maintained that the Articles of Association and Programming/Event Guides illustrate that:

- Usage is not restricted by ownership of property as family members and guests of members use facilities and tenants are permitted to be full members.
- The membership fee is like a condo fee and is minor when compared to fees charged by the City. The Complainant argued that the fees charged through encumbrances ranging from \$330.00 to \$793.00 (C-1, page 249) compare favorably to City of Edmonton family passes (2011) which range from \$1167.00 to \$1782.00 annually. The Complainant also used the Respondent's description of a "minor fee" being \$5.00 to \$10.00 per visit to illustrate that if a family of four made only four visits per month at a nominal fee of \$5.00 this would amount to an annual fee of \$960.00 .
- The property is used for over 60% of the time by persons under the age of 18 years with no restrictions based on race, culture, ethnic origin or religious belief.

[18] In support of the contention that the bulk of users of the park/facility are after school users and young families with two to three children average, the Complainant included a chart documenting park and program usage for all of the months of the year 2010 as well as a chart showing that more than half of the program registrants were under 18 years (C-1, page 362).

[19] In this regard, the Complainant also provided a chart for the year 2012 showing outdoor park/facility use by members, children and guests (C-1, page 363).

[20] As well the Complainant noted 130 of 196 hall rentals were for children's birthday parties and 65% of the outdoor bookings were for children under the age of 18 years (C-1, page 362).

[21] The Complainant noted that the only restrictions to use of the subject property were for safety and legal consideration and included card access, restricted hours of operation , prohibitions on motor vessels on the lake, prohibition of alcohol and any type of glass containers in the park.

[22] The Complainant concluded that there is ample evidence to show that the Summerside Residents Association meets all of the conditions in COPTER and outlined these (C-1, pages 15, 16).

The Complainant requested the Board to grant the subject property 100% exemption from taxes pursuant to sec 14.1 of COPTER.

Position of the Respondent

[23] It is the recommendation of the Respondent, the City of Edmonton that the exemption percentage for tax roll account 9984373 remains at 0%.

[24] The Complainant, the Summerside Residents Association, applied for and was denied exemption under COPTER. The Respondent stated that the reason for denial was that the use of the property is restricted under Section 14(2) (c) and 7(1) (c) of COPTER and that more than minor entrance or service fees are required to be a member of the Summerside Residents Association.

[25] The Respondent also contended that for more than 40% of the time that the property was in use, the majority of those participating in the activities held on the property were 18 years of age or older.

[26] In support of this position the Respondent referred to a Composite Assessment Review Board (CARB), hearing from May 22, 2012 (R-1, pages 11-23) on the subject property which found:

- That the subject property is held not for the benefit of the general public but rather is held primarily for the benefit of the members, tenants and guests of the Summerside Residents Association.
- Further to this, the Respondent noted that CARB Order 2257/2011-P (R-1, pages 24 to 47) also found that property held by residents associations is not held for the benefit of the general public.
- That signage on the property states that it is for the exclusive use of Members and their guests.
- That there was insufficient evidence to determine whether or not the subject property is used by the majority of persons under the age of 18 years at least 60% of the time.
- That the subject property is restricted based on the ownership of property.
- That even though being a “Tenant Member “does not require ownership, tenant’s access is dependent on provision of the access by an “Owner Member”.

[27] The Respondent offered as evidence of the restriction to access based on membership, the Lake Summerside Brochure (R-1, pages 72, 73) and newspaper articles stating that the beach club is for member’s exclusive use contingent on the payment of a yearly fee. (R-1, pages 74-78).

[28] Further to accessibility, the Respondent cited a sign on the property indicating the exclusive use of docks for the residents. (R-2).

[29] The Respondent argued that the fees charged by the Summerside Residents Association are not minor and when questioned about what would constitute a minor fee, the Respondent indicated that a fee of \$5.00-\$10.00 could be considered minor. While the Respondent agrees

that a fee can be charged, it was emphasized that not just any fee can be charged, just a minor fee. The respondent argued that the Summerside Residents Association charges up to \$849 per year.

[30] In summary the Respondent emphasized that the Complainant did not meet the onus to show that a 100% tax exempt status is appropriate for the subject property specifically:

- There was no evidence presented to show that the encumbrances were registered.
- That there was insufficient evidence to determine whether or not the subject property is used by the majority of persons under the age of 18 years at least 60% of the time.
- The Respondent argued that the 2012 taxation year is based on the operation of the Residents Association in 2011. This was supported by MGB order 100/01 (R-2, page 9). No evidence from the year 2011 was presented. Evidence from the years 2010 and 2012 is irrelevant. Further, the Respondent noted that while data for 2011 could have been collected, it was not collected by the Residents Association. The Respondent cautioned the Board not to infer statistics for the taxation year 2012 from the year 2010 and year 2012 information provided by the Complainant.
- With regard to letters written between the City of Calgary and the Government of Alberta Assessment Department, the Respondent urged the Board to consider these only as opinions about the Regulation and to rely on the Regulation itself for guidance in making a decision.

The Respondent contends that the Summerside Residents Association restricts access to home owners within the development area. Outside residents are not allowed and access to amenities is non-transferable. Furthermore, there are also internal regulations based on location of residents' property restricting access to certain walkways and docks.

Decision

[31] The 2012 assessment of the subject property is confirmed at \$5,446,000 as 100% taxable on the basis that the Summerside Residents Association does not qualify for tax exempt status through COPTER.

Reasons for the Decision

[32] In order to arrive at a decision the Board examined the sub-issues of the case.

[33] 1. Does the Summerside Residents Association meet the requirements for the definition of a Residents Association as outlined in the Community Organizations Property Tax Exemption Regulation (COPTER) s.13(e)(1), specifically:

[34] (a) Operates as a Non-profit organization?

The Board finds that the subject property is owned by a non-profit organization, i.e. the Summerside Residents Association as evidenced by a certificate of incorporation under the Alberta Companies Act (C-1, page 86) and testimony by the Complainant to that effect. This was not disputed by the Respondent.

[35] (b) Requires membership for residential property owners in a specific development area?

The Board finds that membership in the Summerside Residents Association is mandatory for all homeowners within the development area outlined (C-1, page 295). The Board notes that an area in northeast corner of the Summerside Neighbourhood of the City of Edmonton has not been included as part of the development area for the Summerside Residents Association and that there are currently no plans to include this area as part of this residents association in the future.

[36] (c) Secures its membership fees by a caveat or encumbrance on each residential property title?

The Board finds evidence implying that an encumbrance is in place on the title of all properties within the development area for the Summerside Residents Association in the Articles of Association for the Residents Association (C-1, page 283).

[37] (d) Is established for the purpose of managing and maintaining the common property, facilities and amenities of the development area for the benefit of the residents of the development area?

The Board recognizes that the Summerside Residents Association has been established for the above purposes according to the Memorandum of Association of Summerside Residents Association (C-1, page 296-297).

[38] (e) Is established for the purpose of enhancing the quality of life for residents of the development area or enhancing the programs, public facilities, or services provided to the residents of the development area?

The Board finds evidence of the above in the Summerside Residents Association Operations/Procedures Manual (C-1, pages 232-273).

[39] (f) Is established for the purpose of providing non-profit, sporting, educational, social, recreational or other activities to residents of the development area.

The Board finds evidence of the above in the Summerside Residents Association Operations/Procedures Manual (C-1, pages 232-273.)

[40] 2. Does the Summerside Residents Association meet the requirements for tax exempt status under the Community Organizations Property Tax Regulation (COPTER) s.14.1(2), specifically:

[41] (a) Is the subject property used in the operation of a professional sports franchise?

There is no evidence that the subject property is used in the operation of a professional sports franchise as defined in COPTER.

[42] Is the subject property for more than 40% of the time that it is in use, the majority of those participating in the activities held on the property are 18 years of age or older?

The Board find that there is insufficient evidence to show that for more than 40% of the time that it is in use, the majority of those participating in the activities held on the property are 18 years of age or older.

No statistical evidence from the year 2011 in the Complainant's submission supports this requirement for the Summerside Residents Association for the 2012 taxation year. The Board notes that that MGB Order100/01 (R-3, page 9) clearly states that the taxation year is based on the previous assessment year; therefore the decision on this issue must be based on statistical evidence from the year 2011. The conclusion of the Board on this sub issue is that the Complainant has not met this requirement under COPTER.

[43] 3. Is the subject property restricted more than 30% of the time under the Community Organizations Property Tax Regulation (COPTER) Section 7(1) on the basis of:

(a) Race, culture, ethnic origin or religious belief?

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

[44] (b) Ownership of property?

The Board finds that the subject property is restricted based on the ownership of property.

As noted in the Summerside Residents Brochure (C-1, page 280). "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 required to remain members of, the Association and will be responsible for the timely payment of membership fees to the Association..."

The Summerside Residents Association Procedures Manual made it clear to the Board that "the Summerside amenities are for the exclusive use of Members of the Summerside Residents Association and their guests. Outside residents will not be allowed use of the park/lake or amenities." (C-1, page 239)

Furthermore, the Articles of Association of the Summerside Residents Association (C-1, page 299) identify categories of membership including "Family Member, Homeowner Member and Rental Member all of which require a form of home ownership within the development area. This confirms to the Board that access to the subject property is restricted on the basis of ownership.

[45] (c) The requirement to pay a fee other than a minor service or entry fee?

The Board finds that the subject property is not restricted based on the requirement to pay fees other than minor entrance or service fees.

While the Board recognizes that a fee is required by all property owners within the Summerside Residents Association and that this mandatory fee is enforced through an encumbrance on each property, it gives more weight to the arguments of the Complainant regarding the nature of the fee. In particular, the Board was persuaded by the Complainant's arguments that compared the fees of the Summerside Residents Association that ranged from \$330.00 to \$793.00 to City of Edmonton family recreation passes that ranged from \$1167.00 to \$1782.00 per year. Furthermore the Board also gave weight to the argument made by the Complainant that a fee described as minor by the Respondent at \$5.00 per visit would result in an annual fee of \$960.00 if a family of

four used a facility only four times in a month. The Board found this to be in the range of the fees charged by the Residents Association and therefore considers the Summerside Residents Association fees to be minor in this context.

[46] (d) The requirement to become a member of an organization?

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

It was clear to the Board that one must be a member or a guest to gain access to the subject property. Gate access and the use of passes as well as part-time security services preclude non- members from gaining access to the property and amenities.

[47] 4. Are any of the above restrictions in place for safety and liability reasons or to avoid contravention of the law? (COPTER section 7(3))

The Board finds that there are some restrictions in place for safety and liability reasons. These restrictions are clearly posted on signage on the subject property and are outlined in the Operations Manual (C-1, pages 8-13).

[48] In summary the Board finds that the Complainant, Summerside Residents Association did not meet all of the legislative tests required for property tax exemption status, specifically the following:

- *The Board finds that there is insufficient evidence to show that for less than 40% of the time that it is in use, the majority of those participating in the activities held on the property are 18 years of age or older.*
- *The Board finds that the subject property is restricted based on the ownership of property.*
- *The Board finds that the subject property is restricted on the basis of the requirement to become a member of an organization.*

Dissenting Opinion

[49] There was no dissenting opinion.

Heard commencing August 23, 2012.

Dated this ____26th____ day of ____October_____, 2012, at the City of Edmonton, Alberta.

Peter Irwin, Presiding Officer

Appearances:

Chris Buchanan, Altus Group

Craig Beaton, Summerside Residents' Association

Karen Lilly, Altus Group

Kerry Reimer, Altus Group
for the Complainant

Moreen Skarsen, City of Edmonton

Tanya Smith, City of Edmonton
for the Respondent