

Edmonton Composite Assessment Review Board

Citation: CVG v The City of Edmonton, 2012 ECARB 2374

Assessment Roll Number: 8990780
Municipal Address: 9420 35 Avenue NW
Assessment Year: 2012
Assessment Type: Annual Revised

Between:

CVG

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Taras Luciw, Board Member
Tom Eapen, Board Member

Preliminary and Procedural Matters

[1] Upon questioning by the Presiding Officer, the parties advised the Board that they had no objection to the composition of the Board. The Board members indicated no bias on this file. In addition, witnesses giving evidence or testimony were either sworn in or affirmed, the choice being up to the individual.

[2] At the outset of the hearing, the Respondent advised the Board that it recommended the 2012 assessment be reduced from \$2,569,500 to \$2,463,000. The Board was advised that the Complainant agreed with this assessment reduction. Accordingly, the only issue before the Board was the subject's tax exempt status.

[3] After the Complainant's testimony, the Respondent requested a recess to pursue discussions with the Complainant. The request was granted and the following was reported to the Board after the recess concluded and the hearing commenced. The City of Edmonton agreed to exempt the living/bedroom area of the caretaker/Pastor. Accordingly, the parties agreed that portions of the subject property under Land Use Codes (LUCs) #100 and #450 were 100% exempt.

[4] It was then determined that the only issue before the Board was the portion of the subject property under LUC #900 (vacant land), which the Respondent stated was taxable at 100% and represented 0.9 acres. The Complainant stated that these lands were exempt.

[5] The original 2012 assessment stated that the taxable portion of the total lands was 17.83%.

Background

[6] The subject property is 4.29 acres with a building on the land. The subject property was built in 1922 and has an effective year built of 1948. The building is a single family home with a garage and is used for religious services and educational purposes. The 2012 assessment is for \$2,569,500.

Issue

[7] What percentage of the land and buildings should be exempt from taxation?

Legislation

[8] The Municipal Government Act reads:

Municipal Government Act, RSA 2000, c M-26

s 460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

j) whether the property or business is exempt from taxation under Part 10.

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.

[Part 10]

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

- (k) property held by a religious body and used chiefly for divine service, public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes;

Position of the Complainant

[9] The Complainant filed this complaint on the basis that the subject assessment should be 100% exempt from all levies as the subject property is 100% used for religious purposes. In support of this position, the Complainant submitted a 16 page evidence package marked as Exhibit C-1. In addition, the Complainant submitted a 29 page rebuttal evidence package marked as Exhibit C-2.

[10] The Complainant stated that the issue is the subject property should qualify for 100% exemption from all levies. The current land use code #450 allows for 82.17% exemption. The Complainant provided the Board with a number of photographs and maps depicting the subject property (Exhibit C-1 pages 3, 7-11, 13-16). Since the purchase of the subject property in 1992, the Complainant stated the only use has been one of religious/assembly.

[11] During cross-examination by the Respondent, the Complainant admitted to the following:

- a) The number of tents used for an assembly could be as high as 8-10 or as low as 1.
- b) The caretaker/Pastor lives in the subject property year round to serve the congregation and act as security for the subject property. The caretaker/Pastor is required to live on-site for the convenience of the congregation and also act as a guidance counselor.
- c) The Complainant notes the congregation considers the building a church and not a single residence and notes the City of Edmonton gave approval for the live-in caretaker/Pastor.
- d) The only other person living with the caretaker/Pastor is the wife of the caretaker/Pastor.
- e) There is one bedroom used for children's play area and one bedroom for children's feeding area. Guests are allowed to stay a maximum of three nights.
- f) The northeast corner of the subject property has been used for overflow parking three or four times during 2011. In 2012 the northeast corner was not used for tents, but used only once for overflow parking.
- g) The Board asked the Complainant if the subject property was open to the public and the answer was that only the congregation used the facility.

[12] During rebuttal, the Complainant produced a number of photographs for the Board showing that the overflow parking during the weekend and at events.

[13] During rebuttal, the Complainant referred the Board to an MGB order #110/02 findings of fact which stated; "the green space, pathways, parking areas and other vacant portions of the

land in the roll numbers under appeal are used in connection with educational purposes.” Therefore, the Complainant argues the northeast corner (0.9 acres) should be exempt as well.

[14] During argument and summation, the Complainant advised the Board that the land under appeal has been exempt up to now and is used for overflow parking and is only used by the Church.

[15] The Complainant noted the Respondent’s photographs were taken during the week and not on the weekend, when the Church is busy.

[16] With the Complainant having the last word, the Complainant stated the subject property should be 100% exempt and referred to s.362(k) of the MGA, which states,

property held by a religious body and used chiefly for divine service, or public worship or religious education and any parcel of land that is held by the religious body and used only as a parking area in connection with those purposes.

Position of the Respondent

[17] The Respondent presented the Board with an 111 page evidence package marked as Exhibit R-1.

[18] The Respondent recommended and the Complainant agreed that the 2012 assessment of the subject property should be amended to \$2,463,500.

[19] The Respondent provided pictures and maps to the Board detailing the building, garage, and old and new parking areas (Exhibit R-1 pages 11-39). The Respondent advised the Board which pictures detailed exemption and which pictures detailed taxable land.

[20] The assessor advised the Board that the assessor had been to the subject property two times and had measured the subject property. There is one area that is not in use, as identified in the photographs, and is located in the northeast corner of the subject property that is taxable. This northeast corner of the property (0.9) acres is overgrown, has debris, is rutted and not conducive for parking.

[21] The Respondent advised the Board about the change in assessment, since the subject property had held a 100% exempt status up to the present year. Reviews on properties receiving exemptions are carried out periodically by the City of Edmonton. The Respondent noted that a review of properties receiving exemptions for religious purposes was commenced in 2009 following the decision in the case of *North Pointe Community Church v Edmonton*, MGB 106/07. The Respondent noted the review is ongoing with respect to properties with large tracts of land where it is evident that portions of the land are not in use. The subject property was identified as one of the properties where portions of the land are not in use.

[22] In the case of *North Pointe Community Church v. Edmonton*, MGB 106/07 (quashed on other grounds), a portion of a property that was used only occasionally for religious services was not exempt. The Court of Queen’s Bench ultimately determined that this was a reasonable way to view this portion of the property (*City of Edmonton v. North Point Community Church*, 2008 ABQB 110 [*North Pointe*]).

[23] The Respondent presented the legal argument to the Board regarding the portion of the subject property that does not appear to be used for anything. The legislation being claimed by the Complainant is under MGA s.362(1)(k). The following are exempt from taxation under this Division:

(k) property held by a religious body and used chiefly for divine service, public worship or religious education and any other parcel of land that is held by the religious body and used only as parking area in connection with those purposes;

[24] In order to qualify for exemption under this part, MGA s. 362(1)(k), the property (or a portion of the property) must meet a three part test:

i held by a religious body;

ii used chiefly for divine service, public worship, or religious education; and

iii the religious use must be the chief use of the property.

[25] In argument, the Respondent reviewed the case law considering MGA s. 362(1)(k). The Respondent advised the Board that court decisions issued by the Alberta Queen's Bench are binding on the Board. Based upon this case law, the Respondent argued that using land for sporadic public worship parking, when there is no other use generally, does not meet the test of being used "chiefly" for "divine service, public worship or religious education."

[26] The Respondent noted that the term "used chiefly" has often been interpreted as meaning 'the majority of the time' or 'used more than 50% of the time.' However, there are various definitions of chiefly which may apply. It is up to the Board to determine what the appropriate test is. Whatever is the correct definition of "chief" (i.e. whether chief is based on time, or percentage of the building used, or number of people attending functions) that definition would be the opposite of "limited" (*Catholic Archdiocese of Edmonton v. Edmonton (City of)*, 1998 ABQB 35, para 15 [*Catholic Archdiocese*]).

[26] The Respondent argued that this issue is clear from the MGB's decision in *Catholic Archdiocese*, where the MGB found the limited use to which the property was put prior to 2006 could not be considered a "chief" use (*Catholic Archdiocese*, paras 13-15). Indeed the MGB specifically found that the occasional religious service on the land did not qualify it under s.362 (1)(k) of the MGA. The Court found that this aspect of the decision was not unreasonable.

[27] In argument and summary, the Respondent stated the evidence suggests a portion of land is not being used for any real purpose, although prayer services or camps may occasionally extend onto the land. There are weeds covering a portion of the property and junk found on the property. The question that arises is therefore whether property that is held by a religious body that is not being used, or is only being used sporadically, is exempt.

[28] In summary, the Respondent stated that caselaw supports the proposition that large areas of land on a church property that are not actually in use, or are only sporadically used, remain taxable.

Decision

[29] The Board accepts the recommendation of the Respondent and agreed to by the Complainant of reducing the 2012 assessment of \$2,569,500 to \$2,463,500.

[30] The decision of the Board is to revise the taxable portion of the 2012 assessment to 21%.

Reasons for the Decision

[31] The Board agrees with the Respondent that the land in question (0.9 acres) is really not used for anything. The land is rutted, uneven and very rough and there is little or no evidence of parking.

[32] While the Board notes that MGB orders are influential or persuasive, they are not binding on the Board. However, the Alberta Queen's Bench decisions do constitute binding authority.

[33] The Board notes that the Court's decision in *North Pointe* holds that a portion of land used only occasionally for religious purposes is not exempt and therefore taxable. Pursuant to the discussion of "chiefly" in *Catholic Archdiocese*, the Board finds that the religious use of the land in question was very limited in 2011.

[34] Applying the Board's findings respecting the use of the 0.9 acre portion of the property to the binding case law, it is clear that the 0.9 acre portion does not satisfy the requirements of s. 362(1)(k). Accordingly, these lands, which the Board accepts constitute 21% of the subject property, are not exempt from taxation.

[35] The Board notes that this taxable/exemption issue arose due to a review of properties receiving exemptions for religious purposes commencing in 2009.

Dissenting Opinion

[36] There was no dissenting opinion.

Heard October 26, 2012.

Dated this 16 day of November, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey,
Presiding Officer

Appearances:

Kundan Babbar

Tom Janzen

for the Complainant

Cameron Ashmore

Moreen Skarsen

for the Respondent

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.