

Calgary Assessment Review Board  
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## CALGARY ASSESSMENT REVIEW BOARD

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Citation:	2024 ABCGYARB 2188903
Decision Name:	CARB 188903M-2024
Decision Date:	2024-11-07
File Number:	188903
Roll Number:	068134204
Location Address:	330 12 AV SW
Complainant:	NIMMONS LAW OFFICE
Owner(s):	CALGARY MASONIC TEMPLE LTD
Respondent:	City of Calgary
Panel Members:	B. Bickford, Presiding Officer J. Rocker E. Okhiria
Assessment:	\$2,510,000

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary. This complaint was conducted by videoconference hearing on October 15, 2024 assigned to Boardroom 6 located at the office of the Assessment Review Board, 1212 31 Avenue NE, Calgary, Alberta.

The Board derives its authority from the *Municipal Government Act*, R.S.A 2000, Chapter M-26 (the MGA) and related legislation as set out in Exhibit "B".

Appeared on behalf of the Complainant:

- H. Sawchuk Counsel for Complainant

Appeared on behalf of the Respondent:

- L. Moore Assessor – City of Calgary
- M. Kaul Counsel – City of Calgary

### Procedural or Jurisdictional Matters:

[1] The Respondent raised a preliminary matter regarding three legal cases cited in the Complainant's rebuttal document (page 619, pp 44-46, consolidated document). The Respondent challenged the authenticity of the cases since they could not be found using standard case research sources. The Respondent questioned whether the citations may have been generated

by an artificial intelligence (AI) tool such as ChatGPT.

[2] The Complainant claimed that he had read the three references in an article. The Complainant confirmed that the cases could not be located through standard research sources and that he could not confirm their authenticity. On that basis, the Complainant suggested that the Board put no weight on those references. The Complainant did not provide a reference to the alleged article.

[3] The Respondent agreed not to press the issue any further given the Complainant's position. The Board agreed to ignore the cases and proceeded with the merit hearing. The Board notes that the issue of the potential submission of AI generated false legal citations is of grave concern, and that the issue would be referred to the General Chair of the Board to consider what actions may be appropriate to prevent this type of incident from recurring.

### **Property Description:**

[4] The subject property is a multi-storey, low rise building located in the Beltline area in southwest Calgary. The sub-market area is shown as Nonres BL2. There is a Traffic Main location influence shown on the Property Summary Report (PSR). The land area is 10,488 square feet (SF) and the lot is rectangular in shape. The land use (zoning) is identified as City Centre – Mixed Use District. The Property use is Commercial with a sub-property use of CS1200 Office. The improvement is a 1928 structure assigned a C quality rating. There is 17,000 SF of building area. The assessment is based on land value as if vacant and the Direct Sales Comparison valuation approach has been used to determine the assessment.

### **Matters and Issues:**

[5] The matter of complaint indicated on the Complaint Form is property tax exemption (#10)

[6] Does the subject qualify for property tax exemption based on the conditions set out in section 362(1)(n)(iii)(B) of the MGA and the *Community Organization Property Tax Exemption Regulation, 2020, AR 281/1998 (COPTER)*?

### **Complainant's Requested Value: \$2,510,000 (no change)**

[7] The Complainant requests the full assessment be exempted from property taxation.

### **Board's Decision:**

[8] For reasons outlined herein, the Board finds the full amount of the assessed value is taxable.

### **Complainant's Submission:**

[9] The Complainant provided a 120-page disclosure document which the Board identified as C1 for reference purposes. The Complainant's rebuttal of 104 pages was identified as C2.

[10] The Complainant described the subject property, its location, ownership, age and other site-specific information.

[11] The Complainant indicated that the owner of the property is a non-profit organization and

gave information on some of the owner's charitable activities.

[12] The Complainant described some historical information for the property regarding previous complaints and taxation levies. The Complainant testified that the owner is the "custodian" of the property and that the property is used by other charitable and benevolent organizations the majority of the time. The Complainant referenced a number of these organizations and provided additional information for some of them. The Complainant provided a summary of some of the current activities in Exhibit Q of C1.

[13] The Complainant argued that the owner has struggled to maintain the property due to expenses like the property tax. The property is available for rent to the general public (C1, Exhibit O), on an hourly or daily basis, with several local organizations being regular users. The Complainant stated that nonprofit users can receive "reduced rates for rentals".

[14] The Complainant turned to the legislation and described how, in their opinion, the subject property qualifies for property tax exemption. The Complainant included several prior Board decisions (Exhibits), in respect to their tax exemption argument.

[15] In response to questioning, the Complainant acknowledged that the property owner used the subject property on a regular basis, that a security company is on-site, that hall rentals include nonprofit as well as personal uses and that rentals are available to the general public. The Complainant indicated that the Respondent had not provided an automatic exemption for the subject property, that only one previous complaint resulted in an exemption and that a formal application, as per the requirements in COPTER, had been submitted to the City of Calgary in September 2024. The Complainant agreed that the property owner is an organization that requires membership and charges a fee.

[16] In rebuttal, the Complainant presented several Court and Board cases and discussed various precedents. The Complainant testified that the subject property is not "a private club, but a community hub...". The Complainant reiterated that the property owner "provides significant community benefits...". The Complainant discussed how the subject property is used, and suggested such use meets the percentage requirement set out in section 4 of COPTER as a primary use. The Complainant also discussed the issues of restricted use and membership fees.

[17] In summary comments, the Complainant enforced its position that the subject property owners conduct a number of charitable functions and that the use of the subject property is predominately for charitable and benevolent functions. The Complainant requested 100% tax exemption for the subject property.

### **Respondent's Submission:**

[18] The Respondent presented a 239-page document which contained the factual disclosure and a legal brief. The Board identified this disclosure as R1 for reference purposes.

[19] The Respondent began by describing the subject property's characteristics. The Respondent pointed to an August 8, 2024 email which noted no exemption application had been received from the owner. The Respondent also pointed to a provincial guide about property tax exemptions. Based on the guide, the Respondent submitted the subject property did not qualify for tax exemption.

[20] As part of the legal brief, the Respondent noted that the Complainant did not take issue

with the assessment values or taxable status of the two adjoining vacant lands used for parking.

[21] The Respondent discussed the requirements of the MGA and COPTER with respect to tax exemption qualification. The Respondent testified that all the requirements of the MGA and COPTER must be met to qualify for tax exemption. Based on the Respondent's interpretation of the legislation and the Complainant's submissions, they concluded the subject property did not qualify for property tax exemption.

[22] The Respondent noted there was almost no current information regarding the use of the property: who used, when used, what amount of space was used, and for what purposes. The Respondent indicated that the Complainant's evidence suggested there was commercial use taking place in the property. The Respondent argued that the Complainant had not provided documentation of the 2023 use of the building and that the tax exempt application provided to the City in September 2024 was not submitted in evidence for this complaint.

[23] In reply to the Complainant's testimony that the owner conducted several charitable activities, the Respondent indicated that there was no substantive evidence of such activity. The Respondent further indicated that there was no evidence if funds received from the operation of the subject property were used for such proposed activities. The Respondent noted that the physical area of the building included some meeting halls, a library and other rooms. The Respondent stated that there was no evidence on how any of these spaces are apportioned for exempt use. The Respondent suggested that, based on information provided by the Complainant, the property owner is "essentially a private club" (page 168/169, consolidated document).

[24] The Respondent then spoke to the amount of charitable use and whether that met the minimum requirement set out in sections 4 and 10 of COPTER. The Respondent also suggested the membership fee charged to members is not minor as required by COPTER. The Respondent argued that there was no evidence to indicate the "general public" benefited from any charitable or benevolent activities that might have been conducted on the property during the assessment year.

[25] The Respondent cited numerous Court and Board decisions in support of their position. Based on all the submissions, the Respondent concluded that the Complainant did not meet the burden of proving a property tax exemption is warranted.

[26] The Respondent asked that the Board deny the Complainant's request.

### **Board's Findings of Fact and Reasons for Decision:**

[27] In making its decision, the Board is cognizant of the requirements of the Regulations and the MGA including, but not limited to, sections 464(1) and 467. In this complaint it is the Board's task to establish if the subject property qualifies for property tax exemption. The Board takes direction found in the MGA, the assessment regulations and guidance provided by Alberta case law.

[28] Keeping in mind the requirements for an annual assessment, the Board reviewed all the evidence available and assigned various levels of weight (importance) to the information.

[29] The Board reminds the parties that it does not currently accept ChatGPT as a reliable research resource, especially with respect to legal authorities. The Board considers standard resources like local law libraries and the Canadian Legal Information Institute (CanLII) as reliable

research resources.

[30] The Board notes that the property tax exemption application submitted by the Complainant to the City of Calgary in September 2024 is not in evidence. The Board considered the conditions and submission dates of such an application within section 16(1) of COPTER. The Board acknowledges the fact that this application will be considered for the 2025 taxation year. Based on these requirements, the Board gives no weight in this complaint to the testimony regarding the submission of a tax exemption application by the Complainant.

[31] The Board considered the *Property Tax Exemptions in Alberta* guide evidence provided by the parties. The guide suggests the usual status of the subject property's owner is "Taxable". The Board notes that property tax exemption qualifications are outlined in the MGA and in COPTER. It is those legislated authorities which the Board follows. The guide was given no weight in the Board's deliberations.

[32] The Board gives no weight to the historical tax summary provided in C1, Exhibit D. This information has no bearing on the subject property's current use (2023 assessment year), and legislated qualifications for property tax exemption.

[33] The Board reviewed all the relevant sections of the MGA and COPTER referenced in this complaint. The Board finds the nature of the subject property, its ownership and its use requires further qualification than just section 362(1)(n)(iii)(B) of the MGA. In reviewing all the sections of COPTER, the Board gave weight to the definitions of charitable or benevolent purpose, general public, and the conditions outlined in sections 3, 4, 5, 7, 10, 15 and 16.

[34] The Board recognizes the requirement of section 3 of COPTER. The Complainant requests that 100% of the property assessment be exempt from taxation. The Board does not accept this position. The evidence in C1 indicates that a new tenant occupies part of the second floor mezzanine level, a commercial entertainment promoter made some use of the facility and that a security company (pages 4/10, consolidated document), has renewed their contract (C1, Exhibit Q). The Complainant indicated that the security tenant was onsite to protect the subject property. Other testimony of the Complainant and Respondent suggests additional rentals are made for personal use purposes. This information suggests that, at least some of the rentable area is being and has been used for a commercial or non-charitable type of business. On that basis, the Board finds 100% of the subject property does not qualify for tax exemption. The Board gave this evidence weight in its deliberation.

[35] The Board considered the term "primarily used" as outlined in section 4 of COPTER. The Complainant submitted that the subject property is primarily used for charitable and benevolent purposes. The Complainant pointed to lists of users and some of the charitable activities conducted by the property owner (pages 10/11/18, consolidated document and C1, Exhibit P). The Board accepts the Respondent's position that, while these activities may have occurred in the past, there is no evidence to show that the referenced users continued to utilize the subject property in the assessment year. There is also no evidence regarding frequency of use, the amount of area used or the actual activities that were conducted on the property during the assessment year. The Board finds there is insufficient evidence to establish that the "at least 60% of the time..." requirement in section 4 of COPTER, is met. The Board gave this information weight in its deliberation.

[36] The Board finds the Complainant meets the requirements of section 5 of COPTER (C1, Exhibits A/B).

[37] The Board next considered the requirements of section 7 of COPTER. The Complainant argued the owner makes the property available for rent to the general public. The Complainant listed numerous tenancies in the building and suggested some tenancies receive reduced rent based on their activities (pages 4/5, consolidated document). The Complainant agreed the property owner requires a membership fee from its members, but users are not required to be members. Based on the evidence in C1 and C2, the Board finds, with the possible exception of safety issues, there is no evidence to show any significant restriction to the use of the property. There may be some restriction with respect to qualifying as a member of the Calgary Masonic Temple, but that does not limit other potential users for the property itself. The Board gave this finding some weight in its deliberations.

[38] The Board considered the requirements of section 10(a) of COPTER. Again, the Board looked at all the information supplied with respect to users of the property. While many of the individual users may conduct charitable or benevolent activities (C1, Exhibit P), there is a lack of evidence to what kind of activities were conducted on the subject property during the assessment year. There is also a lack of evidence to how often and whether these activities are conducted for “a purpose that benefits the general public...”. The Complainant submitted that the property owner also conducts several charitable and benevolent activities (C1, Exhibits P/Q). The Respondent did not challenge this position but did challenge where the funds come from for such activities. The Respondent submitted there was no evidence to show funds raised from the operation of the subject property are used for charitable or benevolent purposes related to the property. The Respondent also pointed to the historical nature of the evidence.

[39] The Board considered the use of funds noted in the evidence. The Board notes there is some evidence of charitable or benevolent purpose activity on the part of the Complainant (C1, Exhibit Q). There is evidence to indicate a substantial amount of revenue from the subject property goes to operating expenses (C1, Exhibits E/Q). The Board also notes the historical nature of the evidence in Exhibit P. The evidence provided in Exhibit Q is more current. The Board considered the information in this Exhibit indicating a casino is held every 24 months and “from that we make donations”. The Board finds the comment regarding casino funds supports the Respondent’s concern about whether funds raised from the use of the property (rents), go toward any charitable or benevolent purpose. The Board also notes comments regarding renovation costs, utility and taxation expenses, a new contract with a security company, and parking being a “key driver” of annual revenue. The Board finds there is insufficient evidence to show the owner has met the “devoted chiefly to the charitable or benevolent purpose...” requirement of section 10(b) of COPTER. The Board gave this information weight in its deliberations.

[40] The Board notes that the conditions provided in section 15(k) of COPTER are similar to those in section 10.

[41] Considering all the evidence and testimony provided in this complaint, the Board finds the subject property does not qualify for property tax exemption. There is a lack of evidence to identify what part or parts of the property are “primarily used” for charitable or benevolent purposes. There is a lack of evidence what types of uses were conducted (and how often), on the property during the assessment year and whether those uses benefitted the “general public”. There is also evidence to suggest the resources of the non-profit owner are not “devoted chiefly” to a charitable or benevolent purpose.

[42] The Board finds the subject property is 100% taxable for the 2024 taxation year.

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**B. Bickford, Presiding Officer**

*An application for judicial review may be made to the Court of King’s Bench with respect to a decision of an assessment review board.*

*An application for judicial review must be filed with the Court of King’s Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to*

- (a) *the assessment review board*
- (b) *the Complainant, other than an applicant for the judicial review*
- (c) *an assessed person who is directly affected by the decision, other than the Complainant,*
- (d) *the municipality, and*
- (e) *the Minister.*

**EXHIBIT “A”**

**DOCUMENTS MARKED AS EXHIBITS BY THE BOARD**

NO.	ITEM
1. C1	Complainant Evidence
2. C2	Complainant Rebuttal
3. R1	Respondent Evidence

**EXHIBIT “B”**

**LEGISLATIVE AUTHORITIES CONSIDERED BY THE BOARD**

***Municipal Government Act, R.S.A. 2000, Chapter M-26 (the MGA)***

**s 1(1)(n)** In this Act,

- (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 289(2)** Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (a) the valuation and other standards set out in the regulations for that property.

**s 460.1(1)** A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

- (a) an assessment notice for

- (i) residential property with 3 or fewer dwelling units, or
- (ii) farm land

**s. 460.1(2)** Subject to section 460(14), a composite assessment review board has jurisdiction to hear complaints about

- (a) any matter referred to in section 460(5) that is shown on
  - (i) an assessment notice for property other than property described in subsection (1)(a)

**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.

**(1.1)** For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll.

**(2)** An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

**(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.

***Matters Relating to Assessment and Taxation Regulation, 2018, AR 203/2017 (MRAT)***

**s. 5** An assessment of property based on market value

- (a) must be prepared using mass appraisal
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

**s. 6** Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

**s. 7(1)** The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value.

**s. 9(1)** When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

***Matters Relating to Assessment Complaints Regulation, 2018, AR 201/2017 (MRAC)***

**s. 19(1)** Parties to a hearing before a panel of an assessment review board may attend the hearing in

person or may, instead of attending in person, file a written presentation with the clerk.