CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the *Act*).

between:

CHAPARRAL RESIDENTS ASSOCIATION LTD. (as represented by ALTUS GROUP LIMITED), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
K. Coolidge, MEMBER
H. Ang, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBERS:	**201560521** **200609766**
LOCATION ADDRESSES:	**225W CHAPARRAL DR SE** **225 CHAPARRAL DR SE**
FILE NUMBERS:	**66628** **67260**
ASSESSMENT:	**$663,000** **$1,080,000**

This complaint was heard on the 31st of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *R. Brazzell* Agent, Altus Group Limited
- *K. Lilly* Agent, Altus Group Limited

Appeared on behalf of the Respondent:

- *M. Jankovic* Policy Analyst, City of Calgary
- *J. Young* Policy Analyst, City of Calgary
- *S. Trylinski* Solicitor, City of Calgary

The following individuals were present for all or part of the proceedings as observers, and did not appear on behalf of a party:

C. Tomiyama	General Manager, Tuscany Residents Association
J. Farqhuarson	President, Tuscany Residents Association
T.Sinclair	General Manager, Sundance Lake Residents Association
B. Buxton	General Manager, McKenzie Lake Residents Associations
C.Groom	General Manager, New Brighton Residents Association
K. Shopland	General Manager, Auburn Bay Residents Association
L. Challes	Cranston Residents Association
N. Connors	Facility Director, Chaparral Residents Association
Shane Keating	Alderman, City of Calgary
J. Akerly	
M. Hogue	
L. Knight	

In this decision, the following abbreviations are used:

"Act" means the Municipal Government Act, c. M-26, RSA 2000, as amended

"COPTER" means the *Community Organization Property Tax Exemption Regulation*, AR 281/98, with amendments up to and including AR 204/2011.

"CA" means a Community Association

"RA" means a Residents Association

"CRA" means the Chapparal Residents Association

Board's Decision in Respect of Procedural or Jurisdictional Matters:

[1] Before the commencement of the hearing, the Complainant requested that relevant material from the hearings on files #66587 and #66583 be carried forward to this hearing. There being no objection from the Respondent, the Board agreed to the Complainant's request, with the proviso that relevant material of the Respondent be carried forward as well.

[2] The parties proposed that the complaints with respect to Roll numbers 201560521 and 200609766 be heard together, to which the Board agreed.

Property Description

[3] The subject properties are owned and used by the Chaparral Residents Association ("CRA") and, as might be expected, are located in the community of Chaparral in the southeast quadrant of Calgary. The property at 225 Chaparral Drive SE is 57.93 acres in size, and contains a clubhouse, a parking lot, and recreational features including a manmade lake and recreation areas.

[4] The clubhouse contains meeting rooms, offices and a common area. The rooms are used for various programs or for educational purposes, and can be rented for private events. Youth oriented organizations, e.g., Scouts, Cubs, Beavers and Guides may rent the facility. There are also "Commercial" memberships in the CRA, and they too can rent the facility. The cost approach was used to arrive at an assessment of $1,080,000.

[5] The property at 225W Chaparral Drive SE, comprising 33.16 acres, is adjacent to 225 Chaparral Drive SE, and contains various recreational features and a passive park area. It is assessed as land only, with a value of $663,000.

[6] Both properties are fenced, and access to the building and recreation facilities is through a single gate. Members must provide proof of membership, and guests must be signed in and accompanied by a member. All property owners who reside within CRA boundary are required to pay an annual membership fee. An encumbrance on the title of each residence ensures payment. Membership fees go to maintaining the two properties and improvements thereon. Property owners who rent their residences may apply to have their tenants accepted as members of the CRA, but if they do so, the property owners must relinquish their memberships.

[7] The CRA subdivision was developed by Genstar, but other lands near the neighbourhood of Chaparral were developed by other developers, hence residents of those other lands are not permitted to be members of the CRA.

Issues:

[8] The Board finds the determinant issues in this complaint to be as follows:

1. Is the subject property exempt from taxation pursuant to s. 362(1)(n) of the *Act* and s. 14.1 of COPTER?

2. If the subject property is found not to be exempt from taxation pursuant to s.

362(1)(n) of the *Act* and s. 14.1 of COPTER, is the subject property exempt from taxation by virtue of s. 362(1)(n)(ii) of the Act, and the applicable provisions of COPTER?

Complainant's Request: Roll No. 201560521, $663,000: Exempt
Roll No. 200609766, $1,080,000: Exempt

Summary of the Complainant's Submissions (as found in Exhibit C-2 (Vol. 1), pp. 7 to 19)

Residents Associations

[9] Most of the facts are uncontested. It is agreed that the subject properties are owned by a RA. RAs are not-for-profit organizations that are professionally managed and operated. The RAs are responsible for the operation and maintenance of community assets, including lakes, parks and other amenities, for the enjoyment of the residents. RAs provide for amenities and recreation within the community for the purpose of enhancing the quality of life for residents, with funding to ensure the community continues to benefit into the future.

Recent Amendments

[10] Recent amendments to COPTER were the Province's response to the Respondent's proclivity for taxing RAs. Prior to the amendments, the Municipal Government Board found RAs exempt under s. 362(1)(n)(ii) of the *Act* in decisions MGB 076/10, MGB 089/10, MGB 090/10and MGB 031/11. Despite these decisions, the Respondent persisted in taxing RAs.

[11] Perhaps the most important argument put forward and accepted by the Municipal Government Board is that RAs are similar to CAs, and that to find RAs exempt is in keeping with the spirit and intent of the *Act*. CAs are not-for-profit organizations in which membership is voluntary, but is nevertheless restricted to residents in a specific area. Like RAs, CAs provide non-profit sporting, educational, social, and recreational activities to the residents of the area. Here's what the Municipal Government Board had to say about RAs and CAs in MGB 076/10, at p. 9:

> Both exist for the purpose of enhancing the community and the quality of life in the community as well as providing recreational services to the communities they serve, though the community association has the added jobs of being a political advocate for the residents and administering intramural sports. It appears that by making membership to the TRA mandatory, the developer of the community has chosen to provide a mechanism that ensures the community residents are able to benefit from services traditionally provided without the need for fundraising.

[12] Now, s. 362(1)(n) of the *Act* and s. 14.1(1) of COPTER provide an exemption for RAs. The amendments to COPTER were passed on October 31st, 2011, and came into effect January 1st, 2012. The Respondent seems to think the new legislation applies City-wide, but the scope of the amendments is limited to "development areas" of the RAs. The CRA applied for an exemption, but despite the exemption in COPTER, the Respondent denied the application.

Intent of the Legislation

[13] The key issue is the intent of the legislation. An interpretation of legislation that leads to an absurd result should be abandoned in favour of one that doesn't. The "common sense" approach relied on by the Respondent ignores the rules of statutory interpretation.

[14] The recent amendments to COPTER recognize the similarities between CAs and RAs. Membership fees in RAs go directly into maintaining the amenities. Nevertheless, the Respondent believes the membership fees charged by RAs are restrictive.

[15] Both major cities, Calgary and Edmonton, have adopted the position that the amendments to COPTER have not changed the situation for RAs. The basis for their position appears to be s. 7 of COPTER. It seems the Respondent is of the view that restricting use of the property to residents, rather than members of the general public, runs afoul of s. 7.

[16] As it happens, the Respondent's view is contradicted in the letter of March 6th, 2012, from Mr. Steve White, Executive Director of Alberta Municipal Affairs Assessment Services, to Mr. Harvey Fairfield, Acting Director/City Assessor of the Respondent (Exhibit C-2, Vol. I, pp. 62-63) in which Mr. White states:

> With respect to your concern related to the application of section 7 of the regulation, the meaning of restricted should be interpreted and applied within the definition of "residents association", as defined in section 13(e.1). In other words, it is our view that a residents association would only be considered as restricting use if they do not permit use to all residents within the specific development area.
>
> The interpretation, as put forward by your legal counsel, is one way in which the regulation may be read. However, such an interpretation would render the amendment to the regulation to having little effect, which is clearly contrary to the intent of the amendment.

[17] Mr. White's interpretation of s. 7 and his conclusion are basically our argument. With respect to the interpretation of legislation, Professor Ruth Sullivan at p. 210 of *Sullivan and Driedger on the Construction of Statutes*, Fourth Ed., concludes:

> As these passages indicate, every word and provision found in a statute is supposed to have a meaning and function. For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.

[18] In law, there is a presumption of coherence. As stated by Professor Sullivan, *supra*, at 263:

> The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by the legislature does not contain contradictions or inconsistencies that each provision is capable of operating without coming into conflict with any other.

[19] Given that the clear intent of the legislation in question is to provide RAs with the same exemption as CAs, it would be manifestly absurd, unjust, and capricious to interpret the *Act* and COPTER to mean that restrictions of ownership, membership, and the annual membership fee run afoul of s. 7 of COPTER. This is particularly so when the definition of RAs in s. 13(e.1) of

COPTER acknowledges that (a) membership is required, that (b) members own property, and that (c) membership fees are payable. In the context of the principles of statutory interpretation set forth above, it would be nonsensical and absurd to read s. 7 of COPTER as prohibiting an exemption based on the requirement of membership, ownership of property, and membership fees.

Avoidance of Absurdity

[20] Absurdity and nonsense can be avoided by reliance on the presumption of coherence. When the provisions of COPTER are read harmoniously, it is clear that the interpretation, shared by Alberta Municipal Affairs and the Complainant is correct. COPTER should be interpreted to mean that the exemption is lost if there are any restrictions between residents of the development area. In s. 13(e.1), the purposes of an RA are defined as:

> (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. [emphasis added]

[21] In all three subsections, the purpose of the activities of the RA is to benefit the residents. Since all of the activities are for the benefit of residents, it makes no sense to expand the definition to persons outside the development area.

[22] Yet another principle of interpretation is that of consistent expression. If, as in s. 362(1)(n)(ii) of the *Act*, the intent was that the activities of a RA were to benefit those outside of the development area, i.e., "for the benefit of the general public", the legislation would explicitly say so. The term "general public" is defined in COPTER. If the legislature had intended that "general public" be read into the definition of "residents association", the legislature could have said so.

[23] If the interpretation of the Respondent is correct, no RA that meets the definition of "residents association" would ever be exempt. This interpretation would result in an absurdity. The Complainant submits that the correct way to interpret the s. 7 restrictions in COPTER is to consider whether use of the facilities of a RA is restricted between residents in the development area. If use was restricted between RA members, then the property of the RA would no longer qualify for an exemption.

[24] An example of a restriction that would prevent exemption under s. 7 would be requiring residents of a RA to be members of the Conservative Party before allowing them use of the facilities. Other examples might, be restricting use by RA residents to those of a certain religious faith, or to those who own property in Canmore. The important thing is that use of the subject properties is not restricted between residents within the development area.

[25] The subject properties meet all the requirements in COPTER. They are owned and held

by and used in connection with a RA, and the RA:

1) is a non-profit organization,

2) requires membership for residential property owners in a specific development area,

3) secures its membership fees by a caveat or encumbrance on each residential property title,

4) Is established for the purposes of

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

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

[26] The subject properties are:

5) not used in the operation of a professional sports franchise,

6) used 60% or more of the time that the property is in use by persons under 18 years of age,

7) not restricted in use more than 30% of the time the property is in use by any of the following:

   i. race, culture, ethnic origin or religious belief,

   ii. ownership of property,

   iii. the requirement to pay a fee other than a minor service or entry fee,

   iv. the requirement to become a member of an organization (subject to s. 7 of COPTER).

[27] The Complainant submits that to accept the Respondent's interpretation of the new provisions would defeat the intention of the Legislature in enacting the amendments to COPTER. The Complainant respectfully asks the Board to grant an exemption to the subject properties pursuant to s. 14.1 of COPTER.

Summary of the Respondent's Submission (as found in Exhibit R-1, File 67260 at pp. 12 to 17 and pp. 139 to 158)

Subject Properties not Exempt

[28] The subject properties are not eligible for exemption for the following reasons:

1) the subject properties are operated for the benefit of a group with limited membership, not for the benefit of the general public.

2) membership in the CRA and access to the subject properties are limited by ownership of property.

3) membership in the CRA and access to the subject properties are limited by more than the requirement to fill out an application form and pay a minor membership fee. To become a member it is necessary to be an owner and resident in the Chaparral subdivision.

[29] Section 362(1)(n)(ii) of the *Act* provides that property "held by a non-profit organization and used solely for community games, sport, athletics or recreation for the benefit of the general public" is exempt. COPTER defines "general public" in s. 1(1)(c) as " . . . pertaining to the general community, rather than a group with limited membership or a group of business associates".

[30] Section 9(1) of COPTER provides that certain property is not exempt under s. 362(1)(n)(ii), i.e.,

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 the property is in use, the use of the property is restricted within the meaning of section 7 as modified by subsection (3).

It is the Respondent's position that use of the subject properties is restricted within the meaning of s. 7(1) more than 30% of the time the property is in use, i.e., use of the subject properties is restricted based on ownership of property, the requirement to pay fees other than minor entrance or service fees, and the requirement to become a member of the CRA.

Evidence from the CRA

[31] Based on evidence provided by the CRA, the facts are as follows:

a) The CRA is a non-profit company.

b) The CRA operates for the benefit of its members.

c) The CRA operates to build and maintain amenities in the Chaparral subdivision.

d) A CRA Card is needed to access the building and park.

e) Drop-in programs at the CRA are for members only.

f) Membership in the CRA is dependent on ownership and residence in Chaparral.

g) An encumbrance on property is required to confirm membership.

h) There are four types of membership in the CRA: Homeowner Members, Rental Members, Family Members, and Tenant Members.

Evidence as Known by the Respondent

[32] McKenzie Towne's RA does not restrict access to McKenzie Towne Hall based on membership for more than 30% of the time the property is being used, and is rightfully exempt from taxation. The CRA is not a member of the Federation of Calgary Communities and therefore is not recognized as a CA as per s. 12(1)(c) of COPTER.

[33] Membership in the CRA is mandatory for all those in the land developed by Genstar, and so the CRA is not a CA as defined in s. 1(2) of COPTER.

History of RA Complaints

[34] Since 1999, certain RAs have been seeking tax-exempt status on grounds that they qualify under s. 362(1)(n)(ii) of the *Act* and COPTER. The Respondent determined that they did not meet tax exemption eligibility requirements, and has been defending this position since 1999. This is primarily due to the fact that use of the property is restricted in that property ownership is pre-requisite for membership and use.

The Amendments to COPTER

[35] The amendments to COPTER make property that is owned, held and used for RAs exempt from property tax as long as the use of the property fits within the requirements of ss. 14.1(2)(a), 14.1(2)(b) and 14.1(2)(c) of COPTER. The requirement in s. 14.1(2)(c) that property is not exempt "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)" is identical to the requirement that led to a denial of exemption by the Board in previous years.

Previous Municipal Government Board Decisions

[36] In the Municipal Government Board's decisions that arose from the 2008 and 2009 hearings, the reasoning hinged on the interpretation of "general community" in 1(1)(c) of COPTER. The Municipal Government Board was satisfied that the neighbourhoods represented by the RAs met the criteria of "general community" as specified in COPTER. The Board considered the term "community" and concluded that a reasonable person would understand

"neighbourhood" as within the meaning of community.

[37] The Respondent maintains that the legislature intended "general public" to be interpreted much more broadly than a single neighbourhood. This interpretation is confirmed by examining other uses of "community" and "general public" in COPTER, and taking a common sense approach to interpreting the pertinent sections of the legislation.

The Common Sense Approach

[38] The common sense approach the Respondent uses in interpreting the statute and regulation is to question whether members of the general public in Calgary can access the facility and thus benefit from its operations. For example, could a father and son (without accompaniment by a member) from the neighbourhood of Scenic Acres use the facilities of the CRA for a minor entrance fee in a fashion similar to a city-owned recreation facility? The Respondent's investigation concluded that this was not possible and so the exemption was denied because this very basic and simple test was not passed.

The General Public

[39] The founding documents of the association state that it exists for the benefit of its members rather than for the general public. The operations and regulations of the organization only serve to illustrate that members of the general public cannot access the facility and so the facility does not operate for the benefit of the general public but rather for the members of the CRA.

[40] In the same way most private clubs (like the Winter Club or the Glencoe Club) operate, members can bring guests into the facility. This does not mean that the club operates for the benefit of the guests. It operates for the benefit of its members, and one of the benefits of membership is to bring guests to the facility.

[41] The common sense approach was used in ARB decisions on these matters, one of which was ARB-628-99. This approach was so overwhelming that even the complainant, whose organization is structured in a similar fashion to the subject organization, admitted that they would not qualify for an exemption:

> In reviewing the relevant regulation, the Community Organization Property Tax Exemption Regulation, (Alberta Regulation 291/98), the Board found that this type of organization and ownership is not exempted by that regulation. During the hearing, both parties agreed that these complaints do not fall within the said regulation.

The Meaning of "General Community"

[42] Is the community of Chaparral the general community? The answer is no, Chaparral is not the general community; it is a specific community covering an area whose boundaries appear ill-defined. The general community should include, at the very least, all those who bear the burden of taxes unpaid by the exempt entity, i.e., at least the rest of the City of Calgary, and conceivably anyone in the province of Alberta.

Ownership of Property a Restriction

[43] Section 7(1)(c) and (d) of COPTER provide as follows:

> 7(1) In this regulation, a reference to the use of property being restricted means . . . that individuals are restricted from using the property on any basis, including a restriction based on
>
> . . . . .
>
> (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.

[44] The requirement to own property is a requirement to pay for a property. In no way can the purchase of property be considered a minor payment or membership fee. It is, in fact, a prohibitive cost that restricts the type of clientele the RA serves, and is yet another reason why RAs are disqualified from exemption.

[45] The requirement of residency as a condition of membership means that the facilities are restricted as per s. 7(1)(d) of COPTER. The requirement to be a member to use the facilities means that access is restricted for more than 30% of the time the facility is in use, and so the Respondent was obligated to deny the exemption application.

Statutory Interpretation

[46] The Complainant's argument that the recent amendments to COPTER are intended to exempt RAs requires a novel approach to legal interpretation, i.e., that the same words in the same section of a piece of legislation be interpreted differently depending on where the reference to the provision occurs.

[47] Regulatory amendments are made by the Minister, and as such, only the Minister that oversaw the amendment can speak to his intent. The best way to understand the intent of the Minister is to look at the body of the legislation and how each section acts within the whole. This is the contextual approach.

[48] The context of s. 7 within the regulation is not ambiguous. Section 7 is placed in Part I of COPTER under the heading "General Rules". As indicated by the heading, the s. 7 requirements apply generally, with a consistent meaning regardless of the exemption category that references them. This is consistent with the interpretive approach suggested by Appendix C of *Property Tax Exemptions in Alberta: A Guide*, which suggests a step-by-step approach of independent questions, each with their own purpose, rather than the approach suggested by the Complainant.

[49] While the letter from an Executive Director at Municipal Affairs puts forward an interpretation, this interpretation carries little weight, especially in the face of strong judicial guidance that the interpretive method is incorrect, the context of the regulation which suggests that the rules are general in nature, and the Government of Alberta's own widely published guidance on how to interpret property tax exemption legislation contradicts his approach.

Equity

[50] Decisions of the Municipal Government Board in 2008 and 2009 speak to the inequity in exempt status between CAs and RAs. The 2009 decision characterized RAs and CAs as one and the same, stating the only difference between the two is: community facilities . . . those operated by a community association do not demand and are not dependent on fees from the property owners, whereas the RAs require the payment of fees by the property owners. Otherwise they are similar as both organizations are non-profit organizations and hold property used solely for community games, sport, athletics or recreation for the general public.

[51] However, CAs have specific mention in both the *Act* and Regulation which singles them out as unique in their function in the community. It is the Respondent's view that the legislature's intent was not to have RAs treated the same as CAs and that RAs should have to qualify under the "community games, sports, and recreation" provision.

[52] The strongest evidence that the legislature had a very specific idea of the type of organization that should be considered for exemption under s. 362(1)(n)(v), the provision that applies to CAs, is s. 12(1)(c) of COPTER, which excludes the property of a CA from exemption if the CA is not a member of the Federation of Calgary Communities or the Edmonton Federation of Community Leagues. With this section, the legislature excluded all Calgary-based organizations (including community associations) that are not members of the Federation of Calgary Communities, thereby excluding all RAs. This should not be ignored by those considering the exemption issue.

[53] There are differences between CAs and RAs. CAs exist to meet the needs of the community and they can play a representative role. They are run by a volunteer board and are responsive to their membership. RAs are created by developers to manage jointly owned property and facilities, and are responsible to the property owners.

Summary of the Complainant's Rebuttal

[54] Did the Province go through an academic exercise? That is exactly what the Respondent wants you to believe. To see how RAs fit within COPTER, turn to pp. 24 and 25 of Exhibit C-2(Vol. 1). Section 7(1) of COPTER is the "filter". Note that s. 7 does not apply to all exempt properties mentioned in COPTER. For example, s. 7 of does not apply to s.11:

> 11 Property referred to in section 362(1)(n)(iv) of the Act is not exempt from taxation unless the accommodation provided to senior citizens is subsidized accommodation.

[55] Section 7 is not of "general application". Certain of the "day cares, museums and other facilities" mentioned in s.15 of COPTER are not exempt if they do not meet the requirements of s. 16(2), which refers to the restrictions in s. 7.

[56] Given the context of the clear, straightforward definition of RAs in s. 13(e.1) of COPTER combined with the statement of exemption in s. 14.1(1), the restriction on ownership of property in s. 7(1)(b) must refer to ownership of property in Cochrane, or some other municipality. That's the only sensible way s. 7(1)(b) can be interpreted in that context.

[57] Section 362(1)(n) of the Act is extremely broad, and accordingly, so is COPTER. COPTER applies differently based on considerations such as "general public" in s. 362(1)(n)(iii) of the Act, hence a variety of tests are required as a result of the interaction between s. 362(1)(n) and the provisions of COPTER. An "omnibus" approach as advocated by the Respondent is not called for.

[58] It would be absurd to read in a prohibition when the whole purpose of the legislation is to grant an exemption for RAs. For an explanation of the "plain meaning" rule, turn to p. 318 of C4, at para. 27:

> 27 However, the plain words of the statute will not always be sufficient to determine legislative intent. In *Rizzo* v. *Rizzo Shoes Ltd.* (Re), 1998 1 S.C.R. 27 (S.C.C.), Mr. Justice Iaccobucci, for the court, found that although the Ontario Court of Appeal had looked to the plain meaning of the specific provisions in question, that Court did not pay sufficient attention to the scheme of the legislation, its object, or the intention of the legislature, and thus the context of the words in issue was not appropriately recognized.

This excerpt from the decision in *Brenner* v. *Brenner*, a case before the B.C. Court of Appeal, is exactly what we mean. The Respondent has ignored the filters.

Board's Decision in Respect of Each Matter or Issue:

The First Issue, and Prior Decisions

[59] Are the subject properties exempt from taxation pursuant to s. 362(1)(n) of the *Act* and s. 14.1 of COPTER? Section 14 of COPTER describes property that is "exempt from taxation under s. 362(1)(n) of the Act that is not exempt under s. 362(1)(n)(i) to (v) of the Act." That means decisions of the Municipal Government Board that relied on s. 362(1)(n)(ii) to find an exemption for residents associations are not relevant to the first issue.

[60] As for the recent decision in *Altus Group* v. *The City of Edmonton*, 2012 ECARB 1304, it appears that the decision was predicated in part on a misapprehension, i.e., that the exemption in question was with respect to assessment, not taxation:

> 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 MGB Order 100/01 (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.

The Legislature's Intent

[61] A necessary second step in dealing with the first issue is to determine the Legislature's intent in amending COPTER. Based on the recent amendments, in particular s. 14.1(1), the Board finds that the Legislature's intent was to exempt the property of residents associations from taxation:

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

Definition of Residents Association

[62] The Board finds s. 14.1(1) to be a very clear indication of intent. The question that follows is basic, i.e., what is a residents association? This question is answered comprehensively in s.13(e.1) of COPTER , which defines a residents association as follows:

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

That is what a residents association is, and that is precisely what is exempted pursuant to s. 14.1(1) of COPTER.

[63] The definition makes it abundantly clear that the management and maintenance of the "common property, facilities and amenities" of a residents association are for the benefit of the residents of the development area, and none other. Similarly, the enhancement of quality of life mentioned in s. 13(e.1)(ii) is for the residents of the development area, as is the provision of "non-profit sporting, educational, social, recreational or other activities" in s. 13(e.1)(iii).

The Chaparral Residents Association

[64] The Board finds that the CRA is a non-profit organization that requires membership for residential property owners in the development area, secures its fees by an encumbrance on each residential property in the development area (a.k.a. "the Chaparral subdivision"), and in all other respects falls squarely within the above definition. The CRA also meets the requirement for exemption in s. 6 of COPTER in that the CRA was incorporated under the Alberta *Companies Act.*

Restrictions on Use of Property, s. 14.1(2)

[65] The inconsistencies begin with s. 14.1(2) of COPTER, which deals with the property of residents associations. In spite of the exemption granted in the preceding subsection, s. 14.1(2) appears to negate the exemption in the following circumstances: (a) to the extent that the property of the RA is used in the operation of a professional sports franchise, (b) if for more than 40% of the time the property is in use, the majority of those participating in the activities on the property are 18 years of age or older, or (c) if for more than 30% of the time the property is in use, "the use of the property is restricted within the meaning of section 7 as modified by subsection (3)."

[66] There is no evidence whatsoever that the subject properties are used to any extent in the operation of a professional sports franchise, hence s. 14.1(2)(a) does not deny an exemption for the subject properties. As for s. 14.1(2)(b), even the Respondent agrees that for more than 60% of the time the subject properties are in use, the majority of those participating in activities are less than 18 years old, thus s. 14.1(2)(b) does not preclude an exemption for the subject properties. That leaves the Board with s.14.1(2)(c).

Conflict

[67] In view of the fact that the benefits mentioned in the definition of residents associations are clearly for the members of residents associations, what is the Board to make of s. 14.1 (2)(c) of COPTER? Section 14.1(2)(c) invokes the restrictions in s. 7(1). The restrictions in s. 7(1) of COPTER are those 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."

[68] There is no evidence of any restriction on use of the subject properties based on race, culture, ethnic origin or religious belief, so the restriction in 7(1)(a) does not apply. Section 7(1)(b) however, presents a problem since all members of a residents association are, both actually and by virtue of the definition in s. 13(e.1), owners of property, i.e., their homes. Even members who are tenants derive their membership from ownership of real property, as do "family members".

[69] Then there is the restriction in s. 7(1)(c), "the requirement to pay fees of any kind, other than minor entrance or service fees", and in s. 7(1)(d), "the requirement to become a member of an organization." As defined in s. 13(e.1) of COPTER, however, a residents association is an ". . . 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 . . . "

[70] The Respondent's position is that sections 7(1)(b) and 7(1)(c) deny an exemption to the CRA. The Respondent seems imbued with the notion that what the legislature giveth, the legislature may take away . . . *in the very same piece of legislation!* The Board does not share that view. The Board agrees with the Complainant that such a view would entirely defeat the recent amendments to COPTER.

[71] The Board finds a conflict between the definition of residents association in s. 13(e.1) and the restrictions invoked by s. 14.1(2)(c). That conflict could lead to an absurd result in the case at hand. In the Board's view, it was not the intention of the legislature to exclude residents associations from exemption based on ownership of property when ownership of property is part of the definition of residents associations. The same view applies to the requirement of fees, and to the requirement to become a member of "an organization".

The Presumption of Rationality

[72] The law presumes legislators to be rational, thus it follows that the provisions of legislation are meant to work together as parts of a harmonious, coherent whole, without contradictions, inconsistencies, or conflict. That presumption is a valuable aid to statutory

interpretation. As explained by Professor Ruth Sullivan:

> Statutory interpretation is founded on the assumption that legislatures are rational agents. They enact legislation to achieve a particular mix of purposes, and each provision in the Act or regulation contributes to realizing those purposes in a specific way. An interpretation that would tend to frustrate the purpose of the legislative scheme is likely to be labelled absurd,
>
> Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworths, 2002), at pp. 243-44

Professor Sullivan has this to say about absurdity in legislation:

> Sometimes it is possible to give meaning to a provision, but that meaning is so absurd that, in view of the court, it cannot have been intended. If there is no way to interpret the provision so as to avoid the absurdity, the court has no choice but to redraft. Ideally in such cases it will be apparent how the error came about --- through careless amendment or "bad translation", for example. Ideally too, it will be clear to the court what the legislature in fact meant to say.
>
> *Sullivan and Driedger on the Construction of Statutes*, supra, *at* p. 132

Interpretation

[73] This Board is not a court, but it has been called upon by both parties to interpret the *Act* and COPTER, and there appears to be no reason why the Board should not follow the rules of interpretation relied on by the courts. Instead of attempting to re-draft the legislation, the Board will attempt to give the conflicting provisions an interpretation that will avoid the conflict between the definition of residents association, and the restrictions in s. 7 of COPTER.

[74] What the Respondent seems to be suggesting with its exemplar, the McKenzie Towne Residents Association, is that residents associations must change to meet the restrictions in s. 7(1). That may or may not be possible for other RAs, for the obverse of s. 14.1(2)(c) as interpreted by the Respondent, would mean that for 70% or more of the time property of a residents association is in use, the property must be open to non-members, and the fees chargeable to those non-members must not be more than "a minor entrance or service fee".

[75] The Respondent's position is that the operations and regulations of the CRA indicate that members of the general public cannot gain access to the subject properties, hence the CRA does not operate for the benefit of the general public. The Board agrees with the Complainant that had the Legislature intended to involve the "general public" in residents associations or the use of the property of residents associations, they would have said so.

[76] It must be remembered that residents associations are non-profit organizations. There is a reason why the membership fees of residents associations are what they are, and that reason is supporting the use and maintenance of the amenities. The Respondent's interpretation of s. 7(1)(c) of COPTER would require residents associations to subsidize non-members, i.e., "the general public" by charging them only "minor entrance or service fees".

[77] "General public" is mentioned several times in COPTER, but not once in reference to residents associations or in the definition of residents association. The definition of residents association refers to "property owners in a specific development area", "the benefit of the

residents of the development area", "enhancing the quality of life for residents of the development area", and "providing non-profit sporting, educational, social, recreational or other activities to the residents of the development area".

[78] The Board finds it is not the intention of the legislature to deny residents associations an exemption by a restriction based on ownership of property when it specifically relies on ownership of property in the very definition of residents association. The Board's concludes that the meaning of "restricted" in s. 14.1(2)(c) and s. 7 of COPTER must be read and understood in the context of the definition of residents association. In that context, the Board will deal first with the restriction on ownership of property.

[79] The Board finds that that the exclusion of exemption in s. 14.1(2)(c) of COPTER based on the restriction on ownership of property in s. 7(1)(b) applies only between and among the residents of the development area of a residents association, in this case, the CRA. As for the exclusion of exemption in s. 14.1(2)(c), i.e., the restriction based on the requirement to become a member of an organization in s. 7(1)(d), the Board finds that "requirement to become a member of an organization" in s. 7(1)(d) refers to a requirement of membership in an organization other than a residents association.

[80] With respect to the exclusion of exemption in s. 14.1(2)(c) based on the restriction on payment of fees in s. 7(1)(c), the Board finds that the reference to payment of membership fees in s. 7(1)(c) applies only with respect to an organization within the meaning of s. 7(1)(d) as interpreted by this Board, i.e., an organization other than a residents association. Finally, the Board finds that the words "restricted from using the property on any basis" in s. 7(1) refers to a restriction between and among residents of the CRA development area.

[81] Finally, in regard to the question of delineation of the boundaries of the CRA, the Board is satisfied that the CRA knows where its boundaries lie.

[82] Having found the answer to the first issue is that the subject properties are exempt, it is not necessary to deal with the second issue.

Board's Decision: Roll No. 201560521, $663,000: Exempt from taxation
Roll No. 200609766, $1,080,000: Exempt from taxation

DATED AT THE CITY OF CALGARY THIS 19th **DAY OF** December **2012.**

Presiding Officer

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

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Exhibit C-1: **Evidence Submission of the Complainant**

Exhibit C-2 (Vol. 1):	**Submission of the Complainant**
Exhibit C-2 (Vol. II):	**General Information on Private Clubs, and Exemption Forms**
Exhibit C-2 (Vol. III):	**Decisions: Supreme Court & Municipal Government Board, & Excerpts from *Sullivan and Driedger on the Construction of Statutes*, 4th Ed.**
Exhibit C-2 (Vol. IV):	**A Decision of a Court, and a Municipal Government Board Decision**
Exhibit C-3:	**Excerpts from *Sullivan and Driedger on the Construction of Statutes*, 4th Ed., and Related Information**
Exhibit C-4:	**Collection of Court Decisions, Municipal Government Board Decisions, and excerpts from *Sullivan and Driedger on the Construction of Statutes*, 4th Ed.**
Exhibit R-1, File 66260:	**Submission of the Respondent, and Assorted Evidentiary Material**
Exhibit R-1, File 66628:	**Assorted Material**

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Complaint type	Property type	Property sub-type	Issue
CARB	Residents Ass'n	N/A	Exemption

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An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

(a) the complainant;

(b) an assessed person, other than the complainant, who is affected by the decision;

(c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;

(d) the assessor for a municipality referred to in clause (c).

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

(a) the assessment review board, and

(b) any other persons as the judge directs.