

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:

Calgary Masonic Temple Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

<i>K. Thompson,</i>	<i>PRESIDING OFFICER</i>
<i>P. McKenna,</i>	<i>BOARD MEMBER</i>
<i>P. Loh,</i>	<i>BOARD MEMBER</i>

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 2014 Assessment Roll as follows:

ROLL NUMBER:	068134204	068134105	068134006
LOCATION ADDRESS:	330 12 Av SW	324 12 Av SW	320 12 Av SW
FILE NUMBER:	75191	75195	75197
ASSESSMENT:	\$2,980,000	\$1,990,000	\$1,990,000

This complaint was heard on 7 day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- B. Shantz *Counsel, Masonic Temple*
- R. Bonnett *Representative, Masonic Temple*
- D. Maplebeck *Representative, Masonic Temple*

Appeared on behalf of the Respondent:

- H. Chan *Counsel, City of Calgary*
- A. Mathai *Policy Analyst, City of Calgary*
- L. Wong *Assessor, City of Calgary*

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

[1] No procedural or jurisdictional issues were brought forward. The two adjacent properties, both owned by the Masonic Temple Ltd. were asked to be heard with this property and the request was for a single decision for all three properties. The Board had no objections to that request. The Board continued with the merits of the complaint.

Property Description:

Property 1

[2] The subject property, known as the Masonic Temple, is a 1928 three storey office building located in the Beltline market area at 330 12 Av SW. The structure has 17,000 square feet of assessable area, situated on 0.24 acres.

[3] The property is assessed for \$2,980,000.

Property 2

[4] The subject property, located at 324 12 Av SW, is a surface parking lot adjacent to the Masonic temple in the Beltline market area.

Property 3

[5] The subject property, located at 320 12 Av SW, is a surface parking lot adjacent to the Masonic temple in the Beltline market area.

Issues:

[6] Should the subject properties be granted tax exempt status under the appropriate sections of the Municipal Government Act (the "Act") and in accordance with the provisions of

the Community Organization Property Tax Exemption Regulation ("COPTER")?

[7] The assessed value is not under complaint before this Board.

Complainant's Requested Value Property 1: \$2,980,000 Taxation Status: Exempt

Complainant's Requested Value Property 2: \$1,990,000 Taxation Status: Exempt

Complainant's Requested Value Property 3: \$1,990,000 Taxation Status: Exempt

Board's Decision:

[8] The assessment for:

Property 1: confirmed at \$2,980,000, Taxation Status: Taxable

Property 2: confirmed at \$1,990,000, Taxation Status: Taxable

Property 2: confirmed at \$1,990,000, Taxation Status: Taxable

Legislative Authority, Requirements and Considerations:

[9] By the Act, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in Subsection (1)(a).

[10] The Act, Section 362(1)(n)(iii).

[11] Community Organization Property Tax Exemption Regulation, Alberta Regulation 281/1998 (COPTER).

Position of the Parties

Complainant's Position:

[12] The Complainant contends that pursuant to s362(1)(n)(iii) of the Act and in accordance with COPTER, the lands located at 320,324 and 330 12 Av SW are entitled to exemption from taxation because the Complainant contends the properties satisfy all requirements of COPTER, most notably those under sections 4,7 and 10.

[13] The Complainant explained that the Calgary Masonic Temple Ltd. owns the subject properties and all of the shareholders are Masonic members. It is primarily used (70-90%) for its own purposes. The building is open to the public but is mainly used by the four groups that make up the Corporation. Between those four groups all persons ages 12 and above may apply for membership to join this organization.

[14] The Complainant had four points to prove the subject properties should be exempt:

- 1) **Calgary Masonic Temple Ltd is a non profit Corporation duly incorporated under the Laws of the Province of Alberta and is the lawful owner of the subject properties (as set forth in the Act 362 (1)(n)(iii)(B) and COPTER s6):** The Complainant submitted a copy of the Corporate Registration System showing that the Calgary Masonic Temple Ltd is

registered as a Non-profit Private Company [C1, exhibit A] and a copy of the Land Titles Certificate [C1, exhibit B].

- 2) **The subject properties are primarily (over 60% of the time) used for the charitable or benevolent purpose and said purpose is for the benefit of the general public in the municipality that it is located (as required by COPTER s4 and s10(1)(a)):** The Complainant submitted an Affidavit of Rick Bonnett, a director of the Calgary Masonic Temple Ltd., to attest to the general nature of the organization, the use of the building and the financial workings. The Complainant provided a list of users of the building splitting them into owners and non owners [C1, exhibit C].
- 3) **The resources are devoted chiefly to the charitable or benevolent purpose for which the properties are used (as required by COPTER s10(1)(b)):** The Complainant is not claiming that the groups within the Freemasons are charitable but rather are benevolent. Point 6 of Affidavit of R. Bonnet points to the benevolent nature of the members and point 7 of Affidavit show there are children's groups and activities. The Complainant explained that a good deal of the revenue went to expenses, taxes and upkeep of the Hall which minimized the costs of use to the Masonic groups. The Complainant stated further that the building is a 1928 building and as such requires upkeep. The Complainant included a list of revenues and expenses, summary of donations, rentable area and a year of building usage [C1, exhibit E]. Parking lot revenues pay for taxes; casino funds go into a restricted gaming account (must be used for charities; can't be used to pay building maintenance or taxes).
- 4) **The Complainant does not restrict the use of the properties (as required by COPTER s7):** The Complainant stated that there are no exclusions in this organization (it is completely inclusive) and that there are no requirements to join (only a nominal fee). Finally, the Complainant provided a redacted document on the administration of Lodges to show how one becomes a member [C1, exhibit F]. This document shows that the only requirements are that a candidate must be of the full age of twenty-one years at the time of signing of his petition, be freeborn, be of good repute, and provide a small fee (not less than \$50). The Complainant also noted that there are two groups organized to accept children of both sexes from age 12-21.

[15] Through questioning the Complainant explained that the adjacent parking lots [file 75195 and 75197] are rented out to the general public (during business hours) and are used for meetings and functions (the rest of the time). Parking revenues are used to cover the taxes on the properties.

Respondent's Position:

[16] The Respondent stated that the subject properties application for exempt status was denied as the properties didn't meet some of the requirements under the Act and COPTER. The requirement are:

- 1) **Non profit status:** the Respondent had no issue with the subject's non profit status.
- 2) **The subject properties are primarily (over 60% of the time) used by the**

charitable or benevolent organization: the Respondent stated in the hearing that it was satisfied as to requirement that the properties be primarily used by the members. The Respondent acknowledged that the Complainant's evidence showed the properties were used 60% of the time by its members. This satisfies the condition of primary use under 362(1)(n)(iii) to (v) of the Act or part 3 of regulation.

- 3) **The properties be used for a benevolent purpose that is for the benefit of the general public, the Act, s362 (1)(n)(iii):** the Respondent contends that the properties do not meet this requirement.
- 4) **The use of the properties must not be restricted, COPTER s7:** the Respondent contends that the properties do not meet this requirement.

[17] As to the third point, the Respondent contends that the subject properties are not used for a benevolent purpose as required under the Act, s362 (1)(n)(iii)(B). These properties are essentially a private club with two parking lots and no evidence has been provided that shows the Calgary Masonic Temple Ltd undertake substantial benevolent activities. The activities listed in the purpose statement (i.e., to further education, scholarships and fundraising for people in need) are for the benefit of the Masonic foundation as a whole (not the Calgary Masonic Temple Ltd) and certainly not the general public.

[18] As to the fourth point, the Respondent contends the subject is not exempt from taxation based on restriction of property use. The qualifications and conditions of COPTER, under s7(1) states:

- 1) ...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 the 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 for sub section (d) above is negated if it falls under COPTER s(2)(a) being that memberships in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee.

[19] Freemasonry is not open to all members of the public; there are restrictions as outlined in their information for Applicants brochure and in their website information. Their brochure clearly states that every member is to have a firm belief in a Supreme Being, however designated [R1, pg 71]. The web article on Freemasonry states that no atheist will ever become a Freemason [R1, pg 365].

[20] The Respondent also stated that the steps to become a member do not meet the COPTER requirements of simply filling out an application and paying a minor membership fee. The Respondent presented Information for Applicant document that outline the aims and objectives and some steps in the process [R1, pg 71]. This states that the suitability of every applicant for admission to a Freemason Lodge is investigated by a special committee of the Lodge. If the Committee approves, the nomination is then submitted to a ballot by members of the Lodge.

[21] The Respondent also asked the Complainant to walk through the process of application. The Complainant outlined that an applicant would have to: first ask a current member for permission to join (there is no recruiting in this organization), then the applicant would need to be sponsored by two members of the lodge, then the applicant is interviewed by said sponsor members and, on successful completion of the interview, admittance would then be put to vote by the lodge as a whole. Once accepted by the Lodge, the applicant will go through an initiation. The Respondent stated that this was not a simple application and minor fee as required by the Regulation.

Complainant's Rebuttal

[22] The Complainant addressed the issue of member restrictions. The Complainant testified that the Hall is open to anyone who wants to rent it and is also open to its membership; according to the 2011 National Household survey there are only 0.19% of the total population in Alberta that declared they were Atheists. Therefore, there is a minimum membership inclusion rate of 99.81%. The 2011 National Household Survey was included [C2].

[23] In questioning, the Respondent pointed out that the number of people (that might not qualify to become a member of this organization) could potentially be over a million. The 2011 National Household Survey lists over a million people with no religious affiliation, along with as many as 13,000 in the category of atheist, agnostic or humanist. This would represent 0.37% of the population. The Respondent pointed out that COPTER states any restriction on membership prevents the properties from changing to an exempt status.

Board's Reasons for Decision: Example

[24] The Board reviewed the evidence provided by both parties and will limit its comments to the relevant facts pertaining to this case.

[25] The Board notes that while it is not bound by previous Board Orders, it did consider those that were submitted (for general principles); this decision is based on the evidence before this Board.

[26] The Board looked to the tests set out by the Act and COPTER in making a determination on the exempt status. The Board applied these tests as follows:

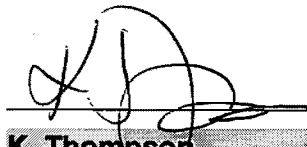
- 1) Non profit status: the Board acknowledged that both parties were in agreement on this point.
- 2) Members must primarily use the properties:
 - i. The Respondent conceded in the hearing that the subject properties were primarily used by the members.
- 3) Used for Charitable or Benevolent purpose that is for the benefit of the general public and owned by a non profit organization:
 - i. The Complainant acknowledged they are not a charitable organization but the Complainant's organization claims they are benevolent. The Board saw no evidence to support this claim. The Complainant did provide a list of donations and organizations that benefitted from them however, the Board had conflicting evidence as to who was actually making the charitable donations; it was unclear to the Board as to the

amount of charitable donations provided by the subject properties (vs. what was contributed by Masonic groups as a whole). The Affidavit of R. Bonnett clearly stated that the majority of funds earned by the Calgary Masonic Temple Ltd. go to maintaining the hall and paying taxes. Bonnett further stated that spending the money this way ultimately allowed the members a place to meet and therefore carry out their benevolent acts. Bonnett also stated the Masonic hall is a necessary part of the benevolent plan, the members need a central meeting place, and by maintaining the building this way it can be used at a low cost by the members. The Board was not persuaded (on the balance of probabilities) by this evidence as concrete proof of benevolence.

- ii. With regard to the requirement for the subject to look to benefit the general public: Again no evidence was presented that convinced the Board that the general public benefited from this organization or that the meetings of the Lodge members benefit the general public.
 - iii. With regard to the requirement for the subject to be owned by a non profit organization, this is a fact, presented in evidence and accepted by the Board and Respondent.
- 4) Must not be restricted by the requirement to become a member of an organization and religious belief (unless that merely means required to fill out an application and pay a minor fee):
- i. The Board, in considering the definition of "restricted", saw evidence that the membership was restricted on several bases (age of the members for one example). The Board also reviewed the requirements to become a member of this organization; the Board considered the Complainants documents to not be compellable evidence because the document provided was mostly redacted. Evidence regarding the membership requirement (in the Respondent's evidence and in testimony) showed that Membership to this organization requires considerably more than the filling out of an application and paying a minor fee.

[27] The Board finds that the subject properties have not met a number of the conditions required under the Act and COPTER regulations for a property to be granted an exemption from taxation, therefore the Tax Status on these properties are confirmed.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF August 2014.


K. Thompson

Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

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

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.*

Property Type	Property Sub-Type	Issue	Sub issue
other		Exemption from taxation	