

# Central Alberta

Regional Assessment Review Board

Decision: **CARB 0377 – 688-695/2015**

Complaint ID: 688-695

Roll №: Multiple Rolls

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ASSESSMENT REVIEW BOARD DECISION  
HEARING DATE: November 5, 2015

PRESIDING OFFICER: J. Dawson  
BOARD MEMBER: R. Schnell  
BOARD MEMBER: Z. Ordman

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BETWEEN:

ROCKY ROD AND GUN CLUB

Complainant

-and-

CLEARWATER COUNTY

Respondent

These are complaints to the Central Alberta Regional Composite Assessment Review Board ["the Board"] in respect of Property assessments prepared by the Assessor of Clearwater County and entered in the 2015 Assessment Roll as follows:

Complaint Number	Roll Number	Legal Address
688	3908254001	Southwest Quarter of Section 25, Township 39, Range 8, West of the 5th Meridian
689	3908363001	Southeast Quarter of Section 36, Township 39, Range 8, West of the 5th Meridian
690	3908241001	Northeast Quarter of Section 24, Township 39, Range 8, West of the 5th Meridian
691	3908253001	Southeast Quarter of Section 25, Township 39, Range 8, West of the 5th Meridian
692	3908251001	Northeast Quarter of Section 25, Township 39, Range 8, West of the 5th Meridian
693	3908364001	Southwest Quarter of Section 36, Township 39, Range 8, West of the 5th Meridian
694	3908242001	Northwest Quarter of Section 24, Township 39, Range 8, West of the 5th Meridian
695	3908252001	Northwest Quarter of Section 25, Township 39, Range 8, West of the 5th Meridian

Assessment Amount: The parties confirmed the value of the assessments is not an issue before the Board.

The complaints were heard by the Composite Assessment Review Board on the 5th day of November, 2015, in the Council Chambers at the Clearwater County office in the town of Rocky Mountain House, in the province of Alberta.

Appeared on behalf of the Complainant: M. Maki, Vice President, Rocky Rod and Gun Club

Appeared on behalf of the Respondent: D. Crout, Manager Assessment & Revenue

**DECISION:**

The assessments for the subject properties are CONFIRMED, tax exemption status is denied.

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**JURISDICTIONAL, PROCEDURAL OR PRELIMINARY MATTERS:**

- [1] The Board has been established in accordance with section 456 of the Municipal Government Act, Revised Statutes of Alberta 2000, chapter M-26 [“the Act”], and Clearwater County bylaw.
- [2] The Board derives its authority to hear this complaint under section 460.1(2) of the Act. The Board composition is as required under section 453(1)(c) of the Act. No Board Member indicated an interest, as described in section 480 of the Act, with regard to the complaints before them. There were no objections from the Complainant or the Respondent with the Board as constituted, its jurisdiction or any person appearing before the Board.
- [3] The Complainant and Respondent confirmed that the information on the Complaint Forms was correct and only matter № 10, *whether the property or business is exempt from taxation*, is before the Board. The Board accepted the Complaint Forms as presented and had confirmed there were valid complaints before it under section 460(5) of the Act. The Board confirmed that the representatives before the Board had the authority to act on behalf of the Complainant and the Respondent for these complaints.
- [4] Both parties indicated that they were prepared to proceed with the complaints. There were no preliminary, procedural, or jurisdictional issues. The merit hearing proceeded.
- [5] The Board accepted the submissions of the parties and entered the exhibits as listed in appendix “A”.

**PROPERTY DESCRIPTION AND BACKGROUND:**

- [6] The Respondent submitted that the eight adjoining land parcels in question are held under Recreation Lease № 2818 issued by the Crown in right of Alberta, [the “subject properties”], and are located approximately 4.0 kilometres directly west of Rocky Mountain House. The improvements on site include two warehouse type structures.
- [7] The Complainant indicated that it has been registered under the Alberta Societies Act since October 14, 1970 and operates as a non-profit organization. It has had property taxation exemption status for the last 45 years on the eight adjoining quarters of moose pasture it leases within Clearwater County.
- [8] The Community Organization Property Tax Exemption Regulation, Alberta Regulation 281/1998 [“COPTER”] came into effective with the 1999 Assessment Roll as a result of the Non-profit Tax Exemption MLA Review Committee in 1997. Municipalities are required to follow the application of COPTER when determining whether a property is eligible for tax exemption or not. The Respondent explained that it had erred in previous assessment rolls and had not properly recognised the correct assessment status of the Complainant until the 2015 Assessment Roll.
- [9] A guide provided by Alberta Municipal Affairs to explain why COPTER was created indicates:

“A key principle of the Alberta property assessment and taxation system is that all property<sup>1</sup> is subject to local assessment and taxation. However, ‘every

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<sup>1</sup> Section 284(1)(r) of the Act.

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*nation provides exemptions from property tax. Typical exemptions include property owned or used by organizations providing services related to government, education, charity, religion, culture, and historic preservation.*<sup>1</sup>

Exemptions provided to qualifying properties tend to reflect social values that are based on collective priorities. The usual basis for determining tax exemption is the facility's accessibility and the public benefit that arises from its use. Government, churches, hospitals, schools and other properties described as eligible for property tax exemption in section 362 (of the Act) are examples of this.

Over time, this understanding of '*public benefit*' has been embraced at the community level, giving rise to a myriad of local property tax exemption decisions that were specific to a property, an area, an organization or a combination of these three. Varying assumptions about '*public benefit*' contributed to a lack of consistency in decisions to tax or exempt property across Alberta. Sometimes an organization operating in two different municipalities is exempt in one but not the other.

The government responded to this lack of consistency by forming the Non-profit Tax Exemption MLA Review Committee in 1997. An important outcome of its review was to establish a set of principles and a process that could be applied to situations requiring consideration for property tax exemption that involved '*non-profit*' organizations. These principles were:

- advancement of '*public benefit*', in terms of charitable and benevolent purposes, community games, sports, athletics, recreation, and educational purposes;
- recognition of the '*volunteer contribution and fund raising component*' that most often characterizes '*not for profit*' status organizations;
- advancement of youth programs and community care for the disadvantaged; and
- appropriate access to non-profit facilities and programs.

These principles and the ability of the local jurisdiction to make its own decisions about activities taking place within its community are acknowledged in the decision-making process outlined in the Regulation."<sup>2</sup>

### **ISSUES:**

[10] The Board considered the parties' positions and determined the following questions are to be addressed within this decision:

- a) Do the subject properties meet the requirements of section 362(1)(n) of the Act; requirements for tax exemption?
- b) Do the subject properties meet the requirements outlined in the COPTER regulation?

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<sup>1</sup> International Association of Assessment Officers, Assessment Administration, (Chicago: International Association of Assessment Offices, 2003).

<sup>2</sup> A Guide to Property Tax Exemptions in Alberta ([www.municipalaffairs.alberta.ca/documents/as/pte\\_guide\\_2005.pdf](http://www.municipalaffairs.alberta.ca/documents/as/pte_guide_2005.pdf))

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## **POSITION OF THE PARTIES**

**Issue (a) Do the subject properties meet the requirements of section 362(1)(n) of the Act; requirements for tax exemption?**

### **Legislative Authority, Requirements, and Considerations:**

[11] Section 362(1)(n) of the Act dictates the requirements for tax exemption:

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

(n) *property that is*

(ii) *held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public,*

### **Position of the Complainant**

[12] The Complainant described the subject properties, how they have been developed, and how they are used by its membership and guests.

[13] The Complainant indicated that its objectives are to:

- i. Promote and disseminate a knowledge of and proper practices of firearm use and proficiency in the shooting sports and allied activities among the population in the region, and
- ii. Promote and encourage the education of safe and responsible firearms use to the youth in the region.

[14] The Complainant explained the makeup of its membership (December 1, 2014 through October 17, 2015) was 763 primary members and 333 family members. The Complainant indicated that the majority of its members are from Clearwater County area but also have members outside of the area and throughout the province. Additionally, 335 guest passes have been issued.

[15] The Complainant argued that providing a facility for the safe discharge of firearms benefits the members and the general public.

### **Position of the Respondent**

[16] The Respondent reviewed a checklist to help define the elements required from section 362(1)(n)(ii);

- i. Is the property held or owned by a non-profit organization?
- ii. Is the property used solely for Community Games, Sports, Athletics or Recreation?
- iii. Is the property used for the benefit of the general public?

[17] The Respondent argued that other gun clubs may also receive tax exempt status in other municipalities; however, it is not aware of how those exemptions are applied. The Complainant has the opportunity to seek an exemption directly from the council through the Act section 364(1).

[18] The Respondent submitted that there are three gun clubs in the municipality and all three are taxable.

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**Board Findings and Decision**

- [19] The Board finds the subject property is held by a non-profit organization.
- [20] The Board finds the subject property is used solely for Community Games, Sports, Athletics or Recreation.
- [21] The Board finds the subject property is used for the benefit of the general public.

**Issue (b) Do the subject properties meet the requirements outlined in the COPTER regulation?****Legislative Authority, Requirements and Considerations:**

- [22] Section 1 of the COPTER defines general public:

- 1(1) In this Regulation,*
- (c) "general public" means pertaining to the general community, rather than a group with limited membership or a group of business associates;*

- [23] Section 7 of the COPTER defines the meaning of restricted:

- 7(1) In this Regulation, a reference to the use of property being restricted means, subject to subsections (2) and (3), that individuals are restricted from using the property on any basis, including a restriction based on*
- (a) race, culture, ethnic origin or religious belief,*
- (b) the ownership of property,*
- (c) the requirement to pay fees of any kind, other than minor entrance or service fees, or*
- (d) the requirement to become a member of an organization.*
- (2) The requirement to become a member of an organization does not make the use of the property restricted so long as*
- (a) membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and*
- (b) membership occurs within a short period of time after any application or minor fee requirement is satisfied.*
- (3) Not permitting an individual to use a property for safety or liability reasons or because the individual's use of the property would contravene a law does not make the use of the property restricted.*

- [24] Section 9 of COPTER further explains eligible exemptions under section 362(1)(n)(ii) of the Act:

- 9(1) The following property is not exempt from taxation under section 362(1)(n)(ii) of the Act:*
- (a) property to the extent that it is used in the operation of a professional sports franchise;*
- (b) property that is used solely for community games, sports, athletics or recreation 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.*
- (2) Property is not exempt from taxation under section 362(1)(n)(ii) of the Act 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).*

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- (3) *For the purposes of subsection (2), limiting the participation in activities held on a property to persons of a certain age does not make the use of the property restricted.*

### **Position of the Complainant**

- [25] The Complainant indicated that it welcomes participation of organized youth groups and it donates range time to the Sea Cadets.
- [26] The Complainant reviewed the legislation and regulation arguing that it offers a photo membership and a range access key within 10 minutes of an applicant satisfying the membership requirements and paying the membership fee.
- [27] The Complainant argues that it believes any membership fee that is approved by its members at the Annual General Meeting each year is minor. The Complainant explained that the fee is the minimum it can charge in order to provide a safe and well maintained facility. The Complainant asserted that there is no additional entrance fee and membership includes the cost of the photo membership card, the range access key, insurance (for members while at the facility and for the facility), utilities, improvements, maintenance, and administrative costs.
- [28] The Complainant explained that for safety reasons the primary member must hold a valid Possession and Acquisition License.

### **Position of the Respondent**

- [29] The Respondent reviewed a checklist to help define the elements required within COPTER:
- i. Is the property restricted based on race, culture, ethnic origin or religious belief?
  - ii. Is the property restricted based on ownership of property?
  - iii. Is the property restricted based on the requirement to pay fees of any kind, other than a minor entrance or service fee?
  - iv. For more than 60% of the time, for the subject property, are the majority of people participating in the activities younger than 18 years of age?
- [30] The Respondent argued that the Complainant indicated that the subject property is used two or three times each year for youth.
- [31] The Respondent indicated that the Complainant was concerned that an increase in membership fees to cover the property taxes would deter membership. The Respondent argued that if a small increase in fees will deter membership than that is an indication that the fees are more than minor.
- [32] The Respondent requested the Board to deny the complaint and confirm the taxable status.

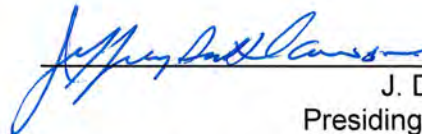
### **Board Findings and Decision**

- [33] The Board finds the subject property is not restricted based on race, culture, ethnic origin or religious belief.
- [34] The Board finds the subject property is not restricted based on ownership of property.

- [35] The Board finds the subject property is not restricted based on the requirement to pay fees of any kind, other than a minor entrance or service fee.
- [36] Notwithstanding the preceding findings by the Board, in order to be successful the Complainant would have to overcome the absolute requirements of section 9(1)(b) of COPTER, to which there are no exceptions. The Board finds that the evidence submitted by the Complainant failed to establish that, for more than 60% of the time the subject property is in use, the majority of those participating in the activities on the property are younger than 18 years of age. As a result, the Board finds the property does not qualify for an exemption from taxation."

### **DECISION SUMMARY**

- [37] The Board is established under the authority of the Act and must follow the Act and regulations:
- 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.*
- [38] The Board finds that the subject properties are not eligible for exemption and the assessments are CONFIRMED.
- [39] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 27th day of November, 2015 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



J. Dawson  
Presiding Officer

**This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 470 of the Municipal Government MGA which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).**

**APPENDIX "A"**

Documents Presented at the Hearing  
and considered by the Board

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<u>NO.</u>	<u>ITEM</u>
1. A1	Hearing Materials with Complaint Form and Notice of Hearing
2. C.1	Complainant submission
3. R.1	Respondent submission
4. C.2	Complainant rebuttal submission