

COMPOSITE ASSESSMENT REVIEW BOARD

BETWEEN:

La Societe Franco Canadienne de Calgary

Complainant

-and-

Foothill County Assessor

Respondent

Brief of the Complainant

La Societe Franco-Canadienne

Roll Number: 2004257520

Hearing Date: November 5th, 2024

WILSON LAYCRAFT
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Attn.: Gilbert J. Ludwig, K.C.

INTRODUCTION

1. This is an appeal of the 2023 assessment year concerning an 18.66 acre property located in Foothills County (the “Property”). The Property is currently used as a recreation space for members of the La Societe Franco-Canadienne (the “Society”), which is a registered non-profit organization in Alberta.
2. The 2023 assessment saw an increase of the assessed value of the property from \$611,710 to \$1,701,910, an over 100% percent increase in the assessed value.
3. The assessment has had a severe impact on the SFCC. As a non-profit, SFCC is severely limited in mitigating the increased tax burden. The SFCC submits that the Property is non-assessable under the exemptions in section 362 of the *MGA*, on the basis of the charitable purpose which the Property is used for.
4. Alternatively, if the Property is determined to be taxable, there are serious issues with the assessed value which warrant an adjustment, first among them was the decision by the Assessor to add the travel trailers owned by members of the Society to the roll as improvements. SFCC also submits that the value of the land is itself excessive and does not account for the severe land use restrictions which limit the market value of the land.

FACTS

5. SFCC is a non-profit registered under the laws of Alberta. Among its charitable purposes is the advancement of education through French language programs and initiatives in Calgary and the surrounding areas.
6. The Society owns the subject property of this appeal which is named “Parc Beauchemin” located in the Municipal District of Foothills County, a roughly hour drive from Calgary. It is located in the Three Point Creek floodplain in a low-lying riparian area. The property is heavily forested by spruce trees which prohibits any arable or grazing activities.

7. Parc Beauchemin was heavily flooded in 2013. The course of the Three Point Creek changed substantially, with the Creek now separating roughly 1.3 acres from the Property. Given the Property's location on a floodplain, the use of the property is severally restricted by law, including:

- No residential development;
- No permanent habitation with access to travel trailers being limited to May to October, at which point the Property is winterized and non-accessible by users;

The Property's limitations mean it cannot be used for any other purpose than for recreation.

8. The society allows individuals to park their travel trailers, at the site for a nominal fee. This fee is used for maintenance and services and SFCC does not make any profit from the fee.

9. The purpose of the recreational space is the advancement of the French language by allowing people who are learning or fluent in French to communicate in a recreational setting. When a space becomes available, the spot is available to the general public so long as the person is willing to speak French in the park. Membership to SFCC is also open to the general public, subject only basic French language skills.

10. On April 16, 2024, SFCC was notified that the Property's assessment was increasing by over 100% from \$611,710 to \$1,701,910. The increase appears to be due to the addition of travel trailers which are parked by users of the Property for recreational purposes being added to the assessment as improvements.

ISSUES

11. The following are at issue in this appeal:

- a.** Is Property tax exempt under the *MGA*?
- b.** If the Property is assessable:

- i. Is the land over assessed?
- ii. Are the travel trailers inappropriately assessed as improvements?
- iii. If the trailers are appropriately assessed as improvements, are they overvalued?

ISSUE A: THE PROPERTY IS NOT ASSESSABLE UNDER THE MGA

12. SFCC is a registered non-profit which owns and operates the Property for the purpose of providing an outdoors recreational space for members of SFCC and their guests.

13. As the Property's primary use is connected to the charitable purpose of the SFCC to advance the learning and speaking of French through education, it is tax exempt. Furthermore, it is also used solely for recreation for the benefit of the general public. The relevant provisions of the *MGA* and its regulations which support this exemption, are as follows:

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,

(iii) used for a charitable or benevolent purpose that is for the benefit of the general public, and owned by

[...]

(B)By a non-profit organization

The *Community Organization Property Tax Exemption Regulation ("COPTER")* provides that:

1(1)(b) "charitable or benevolent purpose" means the relief of poverty, the advancement of education, the advancement of religion or any other purpose beneficial to the community;

10(1) Property Referred to in section 362(1)(n)(iii) of the Act is not exempt from taxation unless

- (a) The charitable or benevolent purpose for which the property is primarily use is a purpose that benefits the general public in the municipality in which the property is located, and
 - (b) The resources of the non-profit organization that holds the property are devoted chiefly to the charitable or benevolent for which the property is used.
- (2) Property is not exempt from taxation under section 362(1)(n)(iii) 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.

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.

Part 3

Other Property Exempt Under Section 362(1)(n)

Definitions

13 In this Part,

(c) “ethno-cultural association” means an organization formed for the purpose of serving the interests of a community defined in terms of the racial, cultural, ethnic, national or linguistic origins or interests of its members;

(d) “linguistic organization” means an organization formed for the purpose of promoting the use of English or French in Alberta;

Community Organization Property Tax Exemption Regulation, Alta Reg 281/1998

14. To summarize, the *MGA* and *COPTER* provide the following requirements for exemptions applicable in this case: first, the property must be primarily used for a charitable or

benevolent purpose for the general public and is owned by a non-profit organization. Second, the property's primary use must be for a charitable or benevolent purpose, or for recreational purposes listed under paragraph (i), for the general public in the municipality it is located and the charity is devoted chiefly to that benevolent purpose. Third, the property cannot be used for a restricted use more than 30% of the time.

Judicial guidance

15. The term "used solely" for found in section 362(1)(n)(ii) does not mean exclusively, or for no other purpose. The term is relative to the overall use and objects of a property. The Alberta Court of Queen's Bench dealt with this issue in the case of *Ukrainian Youth Unity of General Roman Schuchewych-Chuprynka v. Edmonton (City)* (1997), 41 M.P.L.R. (2d) 5 (Alta. Q.B.). The Court was considering section 362(n)(ii) and (iii) of the **MGA**. In reviewing a decision of the MGB, the Court held that partial use for purposes for other than an exempt use did not form a proper basis in law to deny an exemption under the **MGA** and Regulations, even though the legislation required that for exemption purposes the facility be used "solely" for community games, sports, athletics or recreation.

16. A similar finding occurred in *Carmelite Nuns of Western Canada v. Alberta (Assessment Appeal Board)* [1994] A.J. No. 595. The Alberta Court of Queen's Bench was dealing with exempting provisions under the former *Municipal Taxation Act*, which provided that parcels held by religious bodies used chiefly for divine service, public worship or religious education were exempt from assessment. The Court held at paragraph 12:

Exemptions are not lost simply because part of a building that would otherwise be exempt has an ancillary or incidental purpose in addition to the chief purpose of divine service, public worship or religious education. In *Carmelite* the Court went on to find that food service areas, dining rooms, sleeping rooms, and craft rooms within a monastery were entitled to the exemption.

17. The plain meaning of "for the benefit of the general public" was also considered in *Ukrainian Youth Unity*. Bielby J., at 12, finds the words do not mean that all of the public must gain a benefit from a facility:

The plain wording of the phrase does not compel an interpretation which means that every member of the public must be as likely to benefit as any

other for the exemption to apply ... Nor does the plain wording of the section exclude activities designed to benefit only one segment of the public. In fact, the City has extended the exemption to groups which, by definition or location, are designed and likely to benefit only certain segments of the public.

Application

18. SFCC could be considered as exempt under paragraphs (i) or (ii). It has a charitable purpose of advancing the French language through educational initiatives and support. This falls clearly within the definition of a charitable purpose under “advancement of education”. It is also clearly an organization which was “formed for the purpose of promoting the use of English or French in Alberta;”
19. The Property is owned by SFCC and is used for and in connection with this charitable purpose of advancing education by providing a recreational space for people from the general public to learn, speak, and advance the French language. There is no restriction on member to the This charitable purpose is the only use of the Property, and as such, meets the requirement of a primary charitable use.
20. SFCC resources are exclusively used towards the advancement of the French language through educational and community initiatives. The SFCC also has other charitable purposes including the relief of poverty by providing low-income housing to its members.
21. While a membership to SFCC is required to access the Property, the only restriction on membership is a nominal membership fee and basic French language ability. For these reasons, the Property is non-assessable per the *MGA*.

ISSUE: THE LAND IS OVERVALUED

22. If this Board determines that the Property is assessable, SFCC submits that both the land value and improvements are over assessed.
23. The land is to be assessed on market value principles. The *Municipal Government Act* defines market value as meaning “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.”

Municipal Government Act, RSA 2000. c. M-26. s. 1(1)(n)

The test, therefore, is not about the value to the SFCC, but the value to a buyer on an open market.

See ***T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board)*, 1995 ABCA 361**

24. Chiasson J.A., of the BC Court of Appeal, in an opinion concurred with by Frankel J.A., had the following to say with respect to market value in the context of B.C.’s property tax regime:

26 Actual value means market value. It is the overriding requirement for valuation in the section. Subsection (3) permits the Assessor to consider present use, but that does not mean that market value can be value in use rather than value in exchange. In my view, consideration of present use can be relevant to determining market value for at least two reasons: first, to answer the question, "is there a market for that use?" (that is the question in this case); if so, to assess whether the present use is the highest and best use. (As stated in para. 15 of this Court's decision in ***Southam***, "[h]ighest and best use is the use that produces the highest estimate of market value [...]").)

***Pacific Newspaper Group Inc. v. Surrey/White Rock (Assessor) Area #14* 2008 BCCA 284**

25. The *Eaton Company* case dealt with the issue of whether development restrictions must be taken into account in assessment. The Court held that development limitations are a factor to be taken into account in determining market value of the land, and that by focusing on the value of the land to the seller instead of the buyer, the Board made an erroneous and unreasonable valuation of the land.

***T. Eaton Company Ltd. v. Alberta (Assessment Appeal Board)*, 1995 ABCA 361**

See also: *Calgary (City) v. Alberta (Municipal Government Board)* 2004 ABCA 10

26. The Property’s land is currently assessed at \$33,000 an acre. The land is highly overvalued in light of the severe limitations on the land. The Property is comprised of land nearly

entirely situated within the Three Point Creek floodplain. It has no agricultural use, no development use, and is severely limited in its recreational use. The Bylaw restricts land use to recreational activities including the use of travel trailers on up to 50 lots for a limited time of year. Through fall and winter, no use can occur at all. Because of these restrictions—environmental and legal—the land has no development potential.

27. Part of the property includes a section of land which was made inaccessible when the river changed course after the 2013 floods and which shouldn't be assessed at all. The section of land is now a gravel bar which can only be reached by wading across the river. The section which is river which lays in the property boundary's is Crown property and should not be included in the assessment.
28. The Property is also overvalued relative to comparable land. At \$33,000/acre the land is expense even in comparison to comparable farmland in the municipality, land not subject to legal and environmental restrictions.

ISSUE II: THE TRAVEL TRAILER'S ARE EXEMPT FROM TAXATION

29. The improvements added to the assessment included over 40 privately owner travel trailers.

Non-assessable property

298(1) No assessment is to be prepared for the following property:

- (bb) travel trailers that are
 - (i) not connected to any utility services provided by a public utility, and
 - (ii) not attached or connected to any structure;

30. The *MGA* clearly exempts travel trailers from assessment. The only service that trailers parked at the Property may access is a standard 120v outlet located on each lot which can be connected by extension cord. This means that a trailer can only use very limited amounts of electricity. By way of comparison, a standard home oven requires a 220v outlet.
31. The trailers do not have access to potable water from the municipality nor-sewage or wastewater disposal. They must haul their trailers to the septic tanks to pump out waste.

The Bylaw requires these trailers to be moveable within 48hrs and they can only be used from May to October.

32. Furthermore, these trailers are not property SFCC. They are individually owned and may be moved from the property by the owners at any time. Furthermore, even if the owners of the trailers wished, they could not live permanently in the trailers. There is no plumbing or water source that can over winter, and the electricity is shut off during this time.

CONCLUSION

33. In conclusion, the assessment of the Property is incorrect on multiple basis. First, the Property is non-assessable under the charitable exemptions provided for under section 362(1) of the *MGA*. Alternatively, if the Property is assessable, the assessment is too high given the severe land use restrictions caused by flood plain restrictions and corresponding land use restrictions which reduce the land value far below the \$33,000/ acre recognized in the assessment. Further, the assessment of privately owned travel trailers is inappropriate. Not only are these travel trailers not assessable as improvements under the *MGA*, they are privately owned, temporary chattel property which must be removable within 48 hour notice.