

Central Alberta

Regional Assessment Review Board

CARB 0089 1154 2018

Complaint ID 1154

Roll No. 311

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: December 5, 2018

PRESIDING OFFICER: J. DAWSON

BOARD MEMBER: A. GAMBLE

BOARD MEMBER: K. WATERS

BETWEEN:

DONALDA AND DISTRICT AGRICULTURAL SOCIETY

Complainant

-and-

THE VILLAGE OF DONALDA

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by the Assessor for the Village of Donalda as follows:

ROLL NUMBER:	311
MUNICIPAL ADDRESS:	Plan 6419KS Block B, Village of Donalda, Alberta
ASSESSMENT AMOUNT:	\$ 610,430

The complaint was heard by the Composite Assessment Review Board on the 5th day of December 2018, at The Village of Donalda, in the province of Alberta.

Appeared on behalf of the Complainant:

B. FULTON	Donalda and District Agricultural Society
J. PEARSON	Donalda and District Agricultural Society

Appeared on behalf of the Respondent:

T. WILLOUGHBY	Assessor, Municipal Property Consultants (2009) Ltd.
G. LIPKA	Assessor, Municipal Property Consultants (2009) Ltd.

DECISION:

- [1] The complaint is accepted and the subject property is found to be exempted from property tax.

JURISDICTION:

- [2] The Central Alberta Regional Assessment Review Board ["the Board"] has been established in accordance with section 455 of the Municipal Government Act, RSA 2000, c M-26 ["MGA"], and Village of Donalda bylaw.

PROPERTY DESCRIPTION AND BACKGROUND:

- [3] The subject property is in the Village of Donalda and is comprised of 4.41 acres of land with two buildings; a 19,023 square foot structure built in 1982, the Donalda Equine Centre, and a 1,551 square foot warehouse built in 1997. A 200 foot by 220 foot outdoor arena is also located on the property. The Donalda Equine Centre features a 75 foot by 180 foot heated indoor riding arena and a lobby area with kitchen facilities.
- [4] The indoor arena was built for and used with an ice surface for many years and was converted for its current use as a horse riding facility.
- [5] In 2016, after the conversion to a horse riding facility, the Village of Donalda council passed a bylaw increasing the taxable level from exempted (or zero) to 50% of fair market value assessment.

PRELIMINARY MATTERS:

- [6] The Board Chair confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [7] Neither party raised any objection to the panel hearing the complaint.
- [8] The Complainant and Respondent confirmed the complaint information before the board is solely in regards to the exemption status of the Donalda Equine Centre located on and within the property held by Donalda and District Agricultural Society. The Board accepted the documents as presented for the complaint.
- [9] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaints.
- [10] The Board confirmed the submissions of the parties and entered the following Exhibits into the record. See Appendix for details.

ISSUES:

[11] The Board considered the parties' positions and determined the following question is to be addressed within this decision:

Is the Donalda and District Agricultural Society exempt from taxation as provided through the Community Organization Property Tax Exemption Regulation?

POSITION OF THE PARTIES:**Position of the Complainant**

- [12] The Complainant opened its presentation by indicating that the subject property is 100% public use and should be exempt from taxation based on the MGA section 362(1)(n)(ii) and the Community Organization Property Tax Exemption Regulation ("COPTER") sections 1(1)(c), 9(1)(b), 9(2), 12(1)(b), and 16(1)(b).
- [13] The Complainant reviewed MGA section 362(1)(n)(ii) explaining that property that is held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public is exempt from taxation.
- [14] Three key tests are contained within section 362(1)(n)(ii); a) property that is held by a non-profit organization, b) used solely for community games, sports, athletics or recreation, and c) for the benefit of the general public.
- [15] The Complainant argued that the property is held by a non-profit organization and provided evidence; a Certificate of Good Standing, which indicated the Donalda and District Agricultural Society has complied with the requirements of the Agricultural Societies Act for 2018, and a Government of Canada certificate that Donalda and District Agricultural Society has been a registered charitable organization since October 1, 1981.
- [16] The Complainant indicated that the subject property is used solely for community games, sports, athletics or recreation and that depending on the dictionary you choose the definition of equestrian relates to a person riding a horse or horseback riding. Furthermore, the Olympics' have embraced equestrian events in their worldwide sport competitions.
- [17] The Complainant reviewed the equestrian uses of the subject property; recreational pleasure riding, barrel racing, gymkhana, and cattle related activities. The participants are all non-professional amateur athletes or recreational users.
- [18] The Complainant explained that other recreational uses included concert participants because the Donalda Equine Centre is the only community facility capable of safely and legally hosting 500 people.
- [19] The Complainant argued that the subject property is for the benefit of the general public, which pertains to the general community, rather than a group with limited membership or a group of business associates. And is not limited to those confined within the municipal boundaries of the Village of Donalda. There are a dozen non-profit organizations that serve the Village of Donalda and they would not exist if they relied solely on persons that resided within the village boundaries. The Donalda and District Agricultural Society makes no distinction between village residents and

non-village residents and had the legislators intended to limit tax exemptions based on municipal boundaries then it would have made that indication within the regulations. While the Donalda and District Agricultural Society has memberships, users are not required to have a membership to use the equestrian centre or any other facility it operates.

- [20] The Complainant addressed conditions within COPTER. The first condition is 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 then it is not exempt from taxation.
- [21] The Complainant provided evidence that 59.65% of the rented hours were to persons under 18. Additionally evidence was provided that 60% of the memberships sold are family memberships and that a minor may not buy a membership on their own and therefore must sign up with their family.
- [22] The Complainant explained that the 4H uses the facility for shows and meetings which are above and beyond equestrian use and unaccounted for in the statistics provided. The Complainant argued that this indicates an even greater use of the building for persons under 18.
- [23] The second condition is, if for more than 30% of the time that the property is in use, the use of the property is restricted by; race, culture, ethnic origin or religious belief, the ownership of property, the requirement to pay fees of any kind, other than minor entrance or service fees, or the requirement to become a member of an organization.
- [24] The Complainant explained that anyone may rent the facility for a minor entrance fee. The facility is available 24 hours, seven days a week with a key or door code and there is no restriction based on ownership, membership, or any race or religious beliefs.
- [25] The Complainant argued the final condition is that a municipality must grant a non-profit organization an exemption from taxation if it is used for sports or recreation (except the operation of a professional sports franchise) if the property is held by the organization and if the non-profit organization operates the facility on a non-profit basis, which the Complainant confirmed was the case.
- [26] In Rebuttal, the Complainant provided a letter from the Alberta Association of Agricultural Societies that indicated that they had not heard of any agricultural societies having to pay property tax and that they are specifically exempted within the MGA.
- [27] The Complainant requested the Board to overturn the bylaw and maintain the exemption status of the entire property.

Position of the Respondent

- [28] The Respondent indicated that the subject property has been assessed at its current market value and the value of the property is not under review. The riding arena has 50% of its assessment levied as taxable and 50% as exempt. The warehouse is 100% exempt.
- [29] The Respondent reviewed the list of exempted properties within the MGA section 362(1) and demonstrated, through MGA section 362(2), that a council may enact a bylaw making properties held by and used in connection with a society in the Agricultural Societies Act, which are otherwise exempt, subject to taxation to any extent the council considers appropriate.

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- [30] The Respondent provided a copy of the bylaw enacted by the council of the Village of Donalda on December 20, 2016, which specifically names "The Donalda Equestrian Center" as the taxable identity at 50% of the non-residential tax rate.
- [31] The Respondent argued that the Complainant is an agricultural society and the council of the Village of Donalda has the right to impose a bylaw requiring the assessment and taxation of the equestrian centre. However, the Complainant could qualify for exemption if the facility is used solely for community games, sports, athletics or recreation with the conditions imposed by COPTER.
- [32] The Respondent explained that the facility is not used solely for community games, sports, athletics, or recreation for the benefit of the general public.
- [33] The Respondent argued that evidence provided by the Complainant indicates that 40.35% of those renting the facility were over 18 years of age. And of the 59.65% that were indicated under 18, 50% of those in attendance were over 18. Additionally the 60% of memberships indicated as family memberships does not mean that there are persons under 18 are using the facility.
- [34] The Respondent concluded that the Complainant has failed to provide statistical information to reconcile the number of users under or over 18 years of age. Additionally what is taxed in other municipalities is not relevant and a municipality may choose to tax an agricultural society at their own discretion.
- [35] The Respondent requested the Board to maintain the bylaw and assessment.

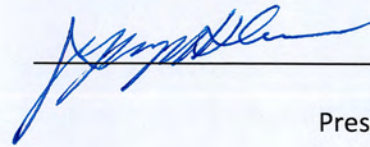
BOARD FINDINGS and DECISION

- [36] The Board finds the subject property is held by and used in connection with the Complainant, which is a society in connection with the Agricultural Societies Act, as evidenced by the Certificate of Good Standing by the Government of Alberta.
- [37] The Board finds the Complainant is exempt from taxation because it meets the definition as contemplated in the MGA section 362(1)(n)(v), providing it meets the qualifications and conditions in the regulations.
- [38] The Board finds that the Respondent may enact a bylaw, as contemplated in the MGA section 362(2), that makes any property held by and used in connection with a society in connection with the Agricultural Societies Act, which would normally be exempt from taxation, subject to taxation to any extent the council considers appropriate.
- [39] The Board finds that the definition provided in regulation for general public is the definition to be used in adjudicating this matter. General public means pertaining to the general community, rather than a group with limited membership or a group of business associates.
- [40] The Board finds no evidence to suggest that general community is defined by municipal boundaries, rather it refers to the entire population of persons wishing to use the subject property.
- [41] The Board finds that equestrian activities are considered a sport, as testified by the Complainant, which is practiced extensively throughout Alberta and around the world.

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- [42] The Board finds that recreation encompasses a wide range of activities done for enjoyment when one is not working, including; concerts, family gatherings and other social events held on the subject property.
- [43] The Board finds the Complainant is a non-profit organization as evidenced by the document from the Government of Canada indicating the status of a registered charitable organization since October 1, 1981.
- [44] The Board finds that the subject property is held by a non-profit organization and used solely for community games, sports, athletics or recreation for the benefit of the general public as contemplated in the MGA section 362(1)(n)(ii).
- [45] The Board finds that when determining use that the persons engaged in the community games, sport, athletics, or recreation are the users. Users do not include the adult chaperones, observers or support personnel required to assist the users.
- [46] The Board finds that when members use the subject property there is no means currently in place to track the use by users. The evidence provided by the Complainant indicates that a person under 18 years of age may not purchase a membership and must be part of a family membership and that a family membership includes one or two adults and their children. The evidence provided by the Complainant indicates that 59% (rounded to next whole number) of the memberships purchased are family memberships while 41% (rounded to next whole number) are individual memberships, which are persons 18 years of age or older.
- [47] The Board finds that the for no more than 40% of the time that the subject property is in use, the majority of those participating in the activities held on the property are 18 years of age or older. The evidence provided by the Complainant indicated that 40% (rounded to next whole number) of the rentals were for use where persons were 18 years of age or older; however, information was not clear whether some of those events included persons under 18 years of age. The Complainant was able to demonstrate that 60% of the rentals were for the use by persons under 18 years of age.
- [48] The Board finds no evidence to suggest that the use of the property is restricted by; race, culture, ethnic origin or religious belief, the ownership of property, the requirement to pay fees of any kind, other than minor entrance or service fees, or the requirement to become a member of an organization.

DECISION SUMMARY

- [49] The complaint regarding the subject property is accepted and is found to be exempted from property tax.
- [50] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 21st day of January, 2019 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

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX

Documents presented at the Hearing and considered by the Board.

NO.

ITEM

1. A.1 – Hearing Materials provided by Clerk (4 pages)
2. C.1 – Complainant Disclosure (17 pages)
3. R.1 – Respondent Disclosure (14 pages)
4. C.2 – Complainant Rebuttal Disclosure (8 pages)