



Legislative Assembly of Alberta

The 27th Legislature
Fourth Session

Standing Committee
on
Private Bills

Tuesday, April 19, 2011
8:32 a.m.

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Standing Committee on Private Bills

Brown, Dr. Neil, QC, Calgary-Nose Hill (PC), Chair
Woo-Paw, Teresa, Calgary-Mackay (PC), Deputy Chair

Allred, Ken, St. Albert (PC)
Benito, Carl, Edmonton-Mill Woods (PC)
Boutilier, Guy C., Fort McMurray-Wood Buffalo (W)
Calahasen, Pearl, Lesser Slave Lake (PC)
Dallas, Cal, Red Deer-South (PC)
Doerksen, Arno, Strathmore-Brooks (PC)
Drysdale, Wayne, Grande Prairie-Wapiti (PC)
Hinman, Paul, Calgary-Glenmore (W)
Horner, Doug, Spruce Grove-Sturgeon-St. Albert (PC)
Jacobs, Broyce, Cardston-Taber-Warner (PC)
Kang, Darshan S., Calgary-McCall (AL)
Lindsay, Fred, Stony Plain (PC)
Lund, Ty, Rocky Mountain House (PC) *
McQueen, Diana, Drayton Valley-Calmar (PC)
Morton, F.L., Foothills-Rocky View (PC)
Redford, Alison M., QC, Calgary-Elbow (PC)
Sandhu, Peter, Edmonton-Manning (PC)
Sarich, Janice, Edmonton-Decore (PC)
Taft, Dr. Kevin, Edmonton-Riverview (AL)
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Bills Pr. 3, 4, 5, and 6 Sponsor

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Standing Committee on Private Bills

Participants

Bill Pr. 3, Auburn Bay Residents Association Tax Exemption Act.....	PB-75
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Robert (Bob) Brazzell, Senior Director, Altus Group

Louise Challes, Manager, Residents Associations, Brookfield Residential Properties Inc.

Karen Lilly, Senior Consultant, Altus Group

Chris Tomiyama, General Manager, Tuscany Residents Association

Stuart Dalgleish, Director/City Assessor, City of Calgary

Brand Inlow, Manager, Administrative Law, City of Calgary

Brian Pincott, Alderman, City of Calgary

Ron Cust, Director of Legislative Projects, Department of Municipal Affairs

8:32 a.m.

Tuesday, April 19, 2011

[Dr. Brown in the chair]

The Chair: Good morning, everyone. Welcome to the meeting of the Standing Committee on Private Bills.

I think we'll begin by taking attendance here and having everyone introduce themselves. We'll start with Mrs. Sarich down on the far left side, please.

Mrs. Sarich: Good morning. Janice Sarich, MLA for Edmonton-Decore.

Mr. Hinman: Paul Hinman, Calgary-Glenmore.

Mr. Dallas: Good morning. Cal Dallas, Red Deer-South.

Mr. Drysdale: Wayne Drysdale, Grande Prairie-Wapiti.

Mrs. McQueen: Good morning. Diana McQueen, Drayton Valley-Calmor.

Mr. Xiao: Good morning. David Xiao, Edmonton-McClung.

Mr. Sandhu: Good morning. Peter Sandhu, Edmonton-Manning.

Mr. Allred: Ken Allred, St. Albert.

Ms Woo-Paw: Good morning. Teresa Woo-Paw, Calgary-Mackay.

Ms Dean: Good morning. Shannon Dean, Senior Parliamentary Counsel.

The Chair: Neil Brown, chair of the standing committee.

Ms Marston: Florence Marston, assistant to the committee.

Mr. Johnston: Good morning. Art Johnston, Calgary-Hays, and sponsor of the four bills that are the subject of today's meeting.

Mr. Lund: Ty Lund, MLA, Rocky Mountain House, substituting for Alison Redford.

Mr. Lindsay: Good morning. Fred Lindsay, Stony Plain.

Mr. Jacobs: Bryce Jacobs, Cardston-Taber-Warner.

Mr. Doerksen: Arno Doerksen, Strathmore-Brooks.

Mr. Horner: Doug Horner, Spruce Grove-Sturgeon-St. Albert.

Mr. Kang: Good morning. Darshan Kang, Calgary-McCall.

Dr. Taft: Hi. Kevin Taft, Edmonton-Riverview.

Ms Calahasen: Pearl Calahasen, Lesser Slave Lake.

The Chair: Thank you, all.

Mr. Boutilier: Good morning. Guy Boutilier of Fort McMurray-Wood Buffalo.

The Chair: Thank you, Guy.

Now, the first order of business is approval of the agenda, which has been circulated. Could I have a motion to approve the agenda as circulated? Mr. Doerksen. Any further additions? All in favour, then? Anyone opposed? That's carried.

The next order of business is approval of the minutes from our April 12 meeting. Those have been distributed. Are there any errors or omissions? Moved by Ms Woo-Paw that the minutes be adopted as circulated. Any discussion? All in favour? Any opposed? That's carried. Thank you.

Members, we have four private bills before us today: Pr. 3, Pr. 4, Pr. 5, and Pr. 6, the Auburn Bay Residents Association, the Cranston Residents Association, the New Brighton Residents Association, and the Tuscany Residents Association tax exemption acts. We've received four separate petitions on those, but they're all seeking the same exemptions within the city of Calgary. You have information regarding those in the representation that we have today. Those are applicable to all four of the petitions.

I just want to remind everyone that we have received, I believe, submissions from Municipal Affairs and from the city of Calgary. You also have a yellow Parliamentary Counsel's report, which is dated April 15, which you should refer to in asking your questions of the petitioners this morning. The remaining materials have been posted on the website, and I presume that everyone has all of those documents. If you don't, then you should see Florence here at the front. I think she's got some extra copies.

Are there any questions before we invite our petitioners to come in? Okay.

[Mr. Brazzell, Ms Challes, Mr. Cust, Mr. Dalgleish, Mr. Inlow, Ms Lilly, Mr. Pincott, and Mr. Tomiyama were sworn in]

The Chair: Good morning, everyone. Welcome to the meeting of the Standing Committee on Private Bills.

I would like to begin by asking everyone to introduce themselves. If we could begin with Ms Challes, and then we'll move around the table and introduce all of my colleagues as well.

Bill Pr. 3

Auburn Bay Residents Association Tax Exemption Act

Bill Pr. 4

Cranston Residents Association Tax Exemption Act

Bill Pr. 5

New Brighton Residents Association Tax Exemption Act

Bill Pr. 6

Tuscany Residents Association Tax Exemption Act

Ms Challes: Hi. I'm Louise Challes, and I'm agent for the Auburn Bay, Cranston, New Brighton, and Tuscany residents associations. I work for Brookfield residential as their manager of associations. Brookfield is formerly Carma Developers.

Mr. Brazzell: Good morning. My name is Bob Brazzell, as it indicates on the sign here, I think. I'm a senior director with Altus Group. We are the tax consultants who have assisted these four residents associations and other residents associations relative to their property tax liability in the city of Calgary.

Ms Lilly: Karen Lilly. I am Bob's associate, a senior consultant with Altus Group.

Mr. Pincott: Good morning. Brian Pincott, and I'm a councillor for the city of Calgary.

Mr. Dalgleish: Good morning. Stuart Dalgleish, director and city assessor with the city of Calgary.

Mr. Cust: Good morning. Ron Cust, director of legislative projects for Municipal Affairs.

8:40

Ms Calahasen: Pearl Calahasen, Lesser Slave Lake. Welcome.

Dr. Taft: Kevin Taft, Edmonton-Riverview.

Mr. Kang: Good morning. Darshan Kang, Calgary-McCall.

Mr. Horner: Good morning. Doug Horner, Spruce Grove-Sturgeon-St. Albert.

Mr. Doerksen: Good morning. Arno Doerksen, Strathmore-Brooks.

Mr. Jacobs: Bryce Jacobs, Cardston-Taber-Warner.

Mr. Lindsay: Good morning. Fred Lindsay, Stony Plain.

Mr. Lund: Good morning. I'm Ty Lund, MLA, Rocky Mountain House, and I'm pinch-hitting for Alison Redford this morning.

Mr. Johnston: Art Johnston, Calgary-Hays.

Ms Marston: Florence Marston, assistant to the Standing Committee on Private Bills.

The Chair: I'm Neil Brown, the MLA for Calgary-Nose Hill and chair of the committee.

Ms Dean: Good morning. Shannon Dean, Senior Parliamentary Counsel and director of House services.

Ms Woo-Paw: Good morning. Teresa Woo-Paw, Calgary-Mackay.

Mr. Allred: Ken Allred, St. Albert.

Mr. Sandhu: Good morning. Peter Sandhu, Edmonton-Manning.

Mr. Xiao: David Xiao, Edmonton-McClung.

Mrs. McQueen: Good morning. Diana McQueen, Drayton Valley-Calmar.

Mr. Drysdale: Wayne Drysdale, Grande Prairie-Wapiti.

Mr. Dallas: Good morning. Cal Dallas, Red Deer-South.

Mr. Hinman: Good morning. Paul Hinman, Calgary-Glenmore.

Mrs. Sarich: Good morning. Janice Sarich, MLA for Edmonton-Decore. Welcome.

The Chair: Mr. Boutilier.

Mr. Boutilier: Yes. Good morning. Guy Boutilier, MLA for Fort McMurray-Wood Buffalo. Good morning to the folks from Calgary.

The Chair: Thanks, Guy.

We'll begin. I'll invite Mr. Brazzell to make a presentation to the committee.

Mr. Brazzell: Thank you very much. Just from the outset I did want to note for the record that both Karen Lilly and myself are lawyers. We aren't here, however, as legal counsel. We are not here as legal counsel for Altus or for any of the residents associations. We're here as tax consultants.

We've had the initial introductions of the people involved here. I will frame the broader issues and provide some introductory comments. Karen Lilly will be speaking to the legislation, and obviously both Louise and Chris will be the best people to deal with some of the questions about the particulars of these residents associations.

You should have in front of you a bound submission which was provided. I won't go through that. It is, as you'll note, relatively lengthy, but it does provide a lot of background. Certainly, if there are questions, some of the answers or some of the colour to those questions will be found in those materials. Again, I won't necessarily refer to them specifically, but they are there, and in due course I'm sure we will reference them.

The first comment I'd like to make is that the perspective of the residents associations is that there really only was one certain way to ensure that they weren't paying a tax which they didn't believe they were required to pay based on the legislation and didn't believe they were required to pay based on the experience of similar types of organizations in the city of Calgary. That's why we're here today, and I did want to make that clear right from the outset, that from their perspective private bills are the only certain way of ensuring that they aren't required to pay a tax which they don't believe they're liable for.

With respect to the residents associations I will give you some background as to how they function and operate and the services they do provide. First of all, they are, obviously, nonprofit organizations, and they are responsible for the maintenance and operation of a variety of assets in their communities. Principally these are things like recreational facilities but also include lakes and parks, entry features, and other amenities which are used for the enjoyment and recreation of their residents. In particular, it's important to note that they provide facilities for and co-ordinate a wide variety of youth-focused recreational programs and a variety of special events in the communities they serve.

The reason why there has been, you know, in comparative terms a proliferation of these groups is that – and I think we'd all attest to the challenges in the public sector – it's apparently not possible for even large communities or large municipalities like the city of Calgary to provide all these types of recreational services and amenities in the neighbourhoods that are being developed around Calgary and, presumably, in other municipalities. In effect, they're essential to the whole fabric of these communities. They provide services. They provide facilities and amenities historically provided by municipalities but which the municipalities have found themselves unable to provide.

It's important also to note that all of these residential associations have a sustainable funding model, so they aren't going to be going back to municipalities looking for support for the maintenance of the facilities or for the recreation that they provide for area residents. They are self-funding and self-sustaining.

Again, they also have gone beyond the typical model in terms of community associations in terms of what they offer for their residents. Many of them have lakes and parks and things of that nature, but they also have extensive facilities for youth recreation and provide for other community activities in their neighbourhood, including things like Brownies and other youth groups like that. They also provide activities such as a Stampede breakfast, yoga, exercise classes, child care, and a variety of parent and tot activities. So the focus is on recreation and the focus is on youth, and they are, as I've suggested, very key aspects of the communities which they serve.

From our perspective there are many reasons, including good public policy reasons, why these residents associations should be tax exempt. They do operate for the benefit of the general com-

munity, and they provide services and maintain facilities that are typically provided by exempt groups in other neighbourhoods. That's what you see with community associations where the land is held by the municipalities typically.

As I've emphasized, given the way in which they've been structured, they are self-sustaining and they will be financially viable into the long term. Accordingly, they will be able to provide the services required and the recreational facilities necessary in these communities through their reasonable economic life so, obviously, from that perspective, are taking a burden off other taxpayers and off the municipality.

The challenge we've faced as tax consultants is that we've looked to minimize the tax liability for these groups, and although there is a vehicle available through the appeal process, it is time consuming, it is costly, and it isn't certain. You can appeal every year, and you can go to hearings every year, but there's no certainty of success. It is, obviously, a costly process, so a private bill is the way in which to move this forward and to ensure that they do obtain the tax exemption they're entitled to.

As I mentioned earlier, Karen Lilly will now speak to the relevant legislation and the current status of the residential associations for tax purposes.

Ms Lilly: Good morning. As Bob said, I'm just going to take a moment to outline the history between these four residents associations in the city of Calgary as well as touch on the legislative framework for tax exemptions. These four residents associations have been attempting to obtain tax exemption status from the city since 2006 both through discussions and negotiations and, ultimately, through the assessment appeal process. As a result of the appeal process through the Municipal Government Board, or the MGB, has declared tax exempt status for the New Brighton Residents Association for 2007 and 2008, the Tuscany Residents Association for 2008, and the Auburn Bay Residents Association for 2008.

The position that was put forward and accepted by the MGB was that residents associations appropriately qualify for exemption under section 362(1)(n)(ii) of the Municipal Government Act, or the MGA, and sections 7 and 9 of the community organization property tax exemption regulation, or COPTER. The MGA provides several considerations which must be satisfied to obtain tax exemption, the most critical of which are that residents associations must be a nonprofit organization, be used for recreational purposes, and the facilities must benefit the general public.

The MGB accepted that the residents associations meet these criteria and, in interpreting the legislation, placed great weight on their finding that residents associations are similar in nature to community associations, as my associate spoke to. Community associations are specifically exempted from taxation by COPTER. The MGB found that exempting residents associations from taxation is consistent with the spirit and intent of the MGA.

8:50

In making this decision, the MGB was also aware of the following statistics: Tuscany currently has approximately 20,000 residents, Auburn Bay will have approximately 23,000 residents once completed, New Brighton will have approximately 17,000 residents once completed, and Cranston will have a population of 30,000 once completed. In considering the large population base serviced by each residents association, the MGB was satisfied that the general public benefited from the residents associations. The practical reality is that these facilities are or will be used to their capacity by their neighbourhoods.

The 2009 assessments were also appealed; however, as of today the 2009 decision has not been rendered by the MGB. Despite these MGB decisions, the city continues to deny these four residents associations tax exemption status, which is why we find ourselves here today.

Thank you.

The Chair: Thank you.

Mr. Brazzell: We just have a few last comments on the public policy issue if I may, Mr. Chairman.

The Chair: Absolutely.

Mr. Brazzell: Thank you. As you will appreciate, taxpayers in these various neighbourhoods obviously benefit from the amenities and programming as provided by the residents association. One of the challenges we've heard from the city is that if these residents associations aren't paying taxes, then property owners in other neighbourhoods will in effect be subsidizing the maintenance of amenities and programs in certain communities. It's our position that that's exactly what's happening today in that the taxpayers in communities that are served by residents associations have to pay for the cost of what are effectively their community associations and to that extent are subsidizing those neighbourhoods where community associations are funded by the city of Calgary.

It's actually, to our minds, exactly the opposite situation. In order to achieve equity here, in order that the residents of the four neighbourhoods who are subject to the application for the private bills here today are treated the same as people in other neighbourhoods, they have to get exempt status for their residents associations.

As you've heard from Ms Lilly, the MGB has in some cases accepted the fact that the intent of the legislation is to exempt these type of organizations, but the fact is, as I mentioned earlier, that they have to apply every year and have to go through a time-consuming and expensive process and, again, with no absolute certainty. The only way in which we can be certain to achieve equity for these residents associations and for the taxpayers who will reside in those neighbourhoods is to have these private bills proceed. We are asking that this committee recommend them to go forward as drafted.

Thank you.

The Chair: Ms Challes, did you have anything to add?

Ms Challes: Not at this time, but I can answer any questions. Thank you.

The Chair: Thank you.

I would invite Alderman Pincott if you want to address the committee at this point.

Mr. Pincott: Well, thank you, Mr. Chairman, and good morning, everybody. It's great to be here, and thanks for the opportunity. As you know, I'm soon to be a councillor for the city of Calgary. I'm also vice-chair of the Intergovernmental Affairs Committee at the city of Calgary. I have with me Mr. Dalgleish, who you've met. I also have Mr. Brand Inlow from the city law department, who could and is here to answer any questions.

We're basically here today, the three of us, to present the city's position on these four private bills. The objective of the four bills, obviously, is to exempt the petitioning residents associations from paying municipal and provincial property taxes except for local improvement taxes associated with their properties. The city of

Calgary's position was established by city council on February 14 of this year and subsequently was set out to you, Mr. Chairman, in a letter from our mayor, Mayor Nenshi, on the 1st of March. On April 14 the city provided the written submission to this committee, which I believe has been distributed. Yes. Thank you very much. The city of Calgary is an interested party before you as all four of the residents associations are Calgary-based organizations. If passed, these private bills will have implications both for the city of Calgary and Calgary taxpayers.

The city of Calgary is opposed to these private bills for some basic reasons. One, the Municipal Government Act and its accompanying regulations provide the necessary legislative and policy framework for which to deal with property tax exemptions. For recreational property such as those that we're talking about, there are already three potential tax exemption categories laid out in the MGA through which the residents associations can apply. One, they can be a community association since, as we've heard, community associations are exempt; two, community sports and games and recreation where a majority of the users are youth; or three, sports and recreation with no youth requirement. The MGA provides remedies through the assessment complaints process, which we've heard about as well, should there be a disagreement regarding property tax exemption. Therefore, it is our contention that there already is a legislative framework in order to address this and seek exemption status.

The key requirements for tax exemption within these categories are public accessibility and that the use of the properties not be restricted. Currently the properties of the residents associations have not been determined by the city of Calgary assessment business unit to be sufficiently open to the general public to be granted property tax exemption. The residents associations discussed here today hold property in specific communities that is used primarily for the enjoyment of their membership, with membership and use being limited by residency and property ownership within that community.

Three, the city of Calgary, when considering property tax exemptions, applies the general principle that tax exemptions are appropriate when the property to which a tax relief would apply returns sufficient benefit to the general taxpaying community. If the property is not publicly accessible, there is not sufficient benefit for the general taxpayers, for the general public. We therefore believe that the properties should be more broadly available for use to warrant an exemption. Again public use policies.

Four, there would be a municipal and provincial tax transfer from the four subject residents associations to all other Calgary and Alberta taxpayers. The 2011 tax transfers are estimated to be about \$216,000. This is made up of just under \$61,000 in provincial property taxes and \$155,000 in municipal property taxes. In the package that was distributed to you, there was a typo. The provincial portion in that package was listed as \$61,917; it's actually \$60,917.

Mrs. Sarich: Sixty.

Mr. Pincott: Sixty, yes. So it's just a thousand dollars less than in your package. That's a tax implication.

Five, approval of these private bills would essentially create tax inequities between the subject properties of the residents associations and all other properties that are subject to the MGA and other regulations both within Calgary and province-wide. This would be contrary to what we believe is fairness and equality.

The Alberta Petitioner's Guide to Private Bills Procedure states that a private act is only warranted when a remedy is not available under existing laws. As we've stated, we feel that the MGA pro-

vides sufficient property tax exemption opportunities and should be the legislative framework which should be used here. Approving these private bills may result in more private bill requests for similar and other circumstances where taxpayers believe they also require tax relief outside of the provisions of the MGA based on their unique circumstances.

It's based on these reasons that the city of Calgary opposes these private bills and respectfully requests that you consider the city's position when making your decision.

There are three other points that I'd like to make. One, the Calgary residents associations have obtained property tax exemption from the city by meeting the eligibility criteria as laid out in the MGA.

Two, the residents associations before you are currently engaged in the process of having their tax status for 2009 and 2011 adjudicated, but that hasn't been concluded, as Ms Lilly has stated. The city of Calgary is committed to continuing to work with these and any other residents associations to assist them in understanding the property tax exemption legislation and processes and ensure that they are sufficiently informed in order to take advantage of any potential opportunities for exemptions that already exist.

Finally, should there be a desire of the committee to consider these exemptions from taxation for these residents associations and their properties, we believe that the most appropriate legislative framework on which you should do this is under the MGA and through COPTER. This would be either achieved through opening the MGA and providing clarification of the existing policy or basically reviewing the tax exemption policies under the MGA.

9:00

Any clarification or expansion of current exemption policy would then be applied to all similar properties and similar uses rather than individual properties being exempted under private acts. Basically, if there is a desire of the committee to look at tax exemptions for residents' associations, let's do it under the MGA, and let's make it fair and equal for everybody.

Thanks very much. As I say, I'm here for questions as well as Mr. Inlow and Mr. Dalgleish.

The Chair: Mr. Dalgleish, do you have anything to add?

Mr. Dalgleish: No, Mr. Chairman.

The Chair: Thank you.

Mr. Inlow, you're okay? Thank you.

Then I would invite Mr. Cust from the Department of Municipal Affairs if he wishes to make some comments.

Mr. Cust: Thank you very much. The presentations by the petitioners as well as the city of Calgary were excellent, accurate, and certainly reflect a situation that we have here in 2011 that certainly is a bit different than in 1998, when the MLA committee on non-profit groups sat. Those associations have evolved and have become something a little different than we had reviewed at that time and that had been reviewed.

The Municipal Government Act was opened on a number of occasions and for exactly that reason, to reflect what's actually happening out there in the province. The city of Calgary has certainly hit the nail on the head in that in this particular case it isn't a question of the ministry not supporting what's being presented by the petitioners, but we certainly believe that we're representing today all of those other residents' associations in Calgary, Edmon-

ton, and the other major cities and that the time is now for us to take a look at all of those at the same time.

The red flags we see are whenever the ratepayer has to take forward a particular item to complaint or to appeal and then on to the courts to have a decision made. That's a suggestion that we may have a gap in our legislation or that we require something else to be added to it to provide clarification. Certainly, in this case, this is an example of exactly that.

We had the opportunity to make a change to provide an exemption for those associations that are registered with Edmonton and Calgary, but it would appear that we have another entity that has evolved and changed that requires a different type of test. Again, the tests for exemptions are always based on whether it's for religion, education, health, or those things that are for the community. We recognize as well that in the community in this case the residents range up to a population of 20,000, which is certainly a lot larger than my community.

If we look at it from that perspective and instead, totally in agreement with the petitioners and certainly with the city of Calgary – we believe this is something that should be dealt with throughout the province. Deal with it as quickly as possible, review all of those kinds of properties, and have a true idea of the impact it will have both on the provincial component and how the municipalities will be impacted by that particular piece.

We will save money in the long run because any time you have an organization that takes a municipality to task, goes through the complaint process, the appeal process, and on to the courts, it's costing somebody money. Let's make the change to legislation in the way that we should so that we apply it evenly throughout the province.

Thank you.

The Chair: Thank you, Mr. Cust.

We'll just welcome Dr. Morton to the meeting this morning, the Member for Foothills-Rocky View.

I would invite members of the committee at this time to ask any questions they may have of the petitioners or the respondents. Ms Calahasen.

Ms Calahasen: Wow, that's fast.

Maybe Mr. Cust can answer this. How long would it take to do a review of what you're talking about in terms of the MGA and the eventual inclusion or whatever decision may be made relative to the petitioners' issue as well as the city of Calgary?

Mr. Cust: Well, the standard response, in my experience over the last short 20 years, is 18 months from the time that we say, "Let's get going," go through the full process, do a proper consultation, make sure we understand the impacts, and make sure all of those that will be affected have an opportunity to have a discussion with us and know how it's handled.

We have another opportunity, though, in that in going into the Municipal Government Act review, starting in 2012, as the minister had indicated, phase 2 of that review would bring in the assessment of tax components for the review. The governance component is intended to be the first one.

Ms Calahasen: Then my question is to the petitioners. What would that do in terms of that 18-month look as well as the city of Calgary? What does it mean for the people that you represent if there was an 18-month wait?

Ms Challes: It would mean that we would continue to pay property taxes and incur the costs that we've incurred to date in

appealing those taxes each year. We would continue appealing the taxes. There's considerable cost and time involved in doing that.

Mr. Brazzell: In the practical the 18 months may well mean that there isn't a change till 2014. It's just, you know, the practical reality. I mean, obviously, you're looking at a situation where if you don't change it for two years, you're going to have three years of tax at issue.

Mr. Pincott: For the city, obviously, we're saying that rather than dealing as one-offs, let's actually open up the MGA and make it consistent across all of the residents' associations not just for the city, obviously, but, as we heard from Mr. Cust, for the province. I think that from a fairness and equity point of view, that's the right approach.

Ms Calahasen: Thank you.

The Chair: Ms Woo-Paw, please.

Ms Woo-Paw: Thank you, Mr. Chair. I have three questions. Do I have to ask them separately?

The Chair: Let's see how long they are. We have a fairly lengthy list.

Ms Woo-Paw: Okay. My first question is that I would like to hear the distinction that you make in terms of how you define general public and general community. I would like to hear from Alberta Municipal Affairs and the city of Calgary and the representatives. How do you define general public and general community?

Mr. Pincott: For the city Mr. Dalgleish will answer that.

The Chair: Go ahead, Mr. Dalgleish, please.

Mr. Dalgleish: Thank you, Mr. Chairman. That was certainly one of the issues that the Municipal Government Board dealt with in their decision. The city of Calgary's view at this time is that general public is really all Calgarians beyond the community of interest. The Municipal Government Board spoke to community as being similar to that of a community association. We see a distinction between the community association area, which is referenced in the MGA as being a specific area, and what the Municipal Government Act refers to as general community, the difference between specific and general being that general is broader than that particular community.

The Chair: But in the case of the exemptions which have already been granted, obviously you considered the fact that there was sufficient access for 20,000 or 30,000, that that constituted the general public. Is that not right? I mean, you did grant these exemptions in the past.

Mr. Dalgleish: For one particular association we have granted an exemption where we went through the activities of that association and determined that they did indeed meet the accessibility requirements, which is beyond 70 per cent of the time that the property is in use to meet those public accessibility requirements. In that one case, yes, Mr. Chairman, we have.

The Chair: Thank you.

Ms Woo-Paw, you had a further follow-up question?

Ms Woo-Paw: Municipal Affairs: I want to hear how they each defined it.

The Chair: Mr. Cust, do you want to make a comment on that?

Mr. Cust: Thank you very much. Of course, the general public is defined in the community organization property tax exemption regulation, and that particular definition indicated that general public meant pertaining to the general community rather than a group with limited membership or a group of business associates, which is consistent with what the city of Calgary has indicated, which is: can the public access these properties? Do they have the opportunity to come and enjoy the recreation that the other people within that exclusive group have?

When this definition was created, the definition more contemplated general public in the context that you could have a general public which included curlers, curlers of a community that could be general as long as all of those curlers that chose to come to that community could come and curl and not be restricted.

9:10

The definition of whether it's community or general public probably is changing and evolving very much. I think we're talking more about accessibility, and maybe part of our focus in the review would be a discussion about accessibility, which means that instead of the 18-month timeline there could be a possibility that if we review the regulation, we could turn that around quicker, and instead we'd talk about those definitions that control the accessibility issue.

A restriction in this regulation is that if you have a restriction of the use of the property for more than 30 per cent of the time, that property is automatically taxable and continues to be taxable. Understand that the exemption is not an entitlement. It's an opportunity to receive an exemption in exchange for something that you're providing for the public. In the case of this, if they're providing that need in the public and a need is being satisfied throughout more than just a few thousand people – but in this case, where we have 20,000 people in a community, it could also include those 20,000 plus other people that are coming in at some point in time that are using those facilities. But to satisfy the exemption, it must meet the needs of that and not end up with a situation where you have exclusive clubs, exclusive memberships. Those people receive the exemption and the benefit as the other groups would.

The Chair: Mr. Brazzell, could I ask you, then: is the accessibility to the facilities and programs controlled in any way by having an access fee? Are there specific fees required of the residents to participate in those facilities or programs, either directly or indirectly, through their tax, something on their property?

Mr. Brazzell: There is. There is a recovery type of fee situation because you have to obviously ensure that the facilities are maintained. It's done on a cost-recovery basis, so there is, in fact, a fee. But I think the Municipal Government Board in reviewing that found it to be, first of all, just in the way of a recovery of expenses or costs, but secondly, in fact it was construed as being a fee, it was a nominal fee and in no way limited the ability of people to participate or to use those facilities.

Again, you can compare that with, you know, city-funded parks and recreation facilities, where the costs are certainly equivalent and in some cases higher than what the cost-recovery fee that you're charged in relation to the res associations. I think it's been clear from the Municipal Government Board decisions, and we can certainly refer you to the relevant description there. It really isn't in any way a restriction based on that fee.

Over and above that, the board was equally clear that because of the definition of general public found in the regulation, that Mr.

Cust referred to as pertaining to the general community rather than a group with limited membership or a group of business associates, the intention there was that it relate to a circumstance where in order to be outside of the general public, you really had to be very much limiting the ability of people to be part of that organization. That's why they used the idea of a group of business associates or made it clear with something about a group with a limited membership, which really contrasts quite dramatically with what we have here, where everybody in the community can participate.

Certainly, Mr. Tomiyama can speak to the fact that at Tuscany there are 20,000 people. Really, the only limit on the use of the facilities is saturation. I think he can speak to that better than I can, but other than the fact that at some point you just have to cut off use for the simple fact that the facilities can't support additional use, these are open.

Ms Woo-Paw: Could I just make a comment and not proceed with my questions, please?

The Chair: Just a moment, please, Ms Woo-Paw.

So the fees are mandatory for the residents' association, at least for an initial period, as I understand it. Is that correct?

Mr. Brazzell: They are mandatory fees if you're a member. That's correct.

Ms Challes: It's an encumbrance on everybody's title. There's an encumbrance to ensure the sustainability of the amenity. They're paid each year. Yes, they're annual fees.

The Chair: At what point does the encumbrance come off and it becomes then a voluntary fee?

Ms Challes: The encumbrance does not come off. The encumbrance is a permanent encumbrance registered against every property. That's to ensure the sustainability of the amenity for as long as there are residents there.

The Chair: Okay. Thank you.

I'm going to ask Mr. Lund if you wanted to propose the next question, please.

Mr. Lund: Thank you, Mr. Chairman. I'm curious. I think it was Bob who made the comment that the improvements were going to – you weren't asking for exemption for the improvements, like the clubhouse.

Mr. Brazzell: No. The exemption would apply to the entire asset, the land and the facilities constructed on it.

Mr. Lund: Mr. Chairman, I'm not clear yet on who can use it. I heard the comment about saturation; of course, if the community is large enough, yeah, the saturation, and then you couldn't get time for outside. I see that some of the facilities, the clubhouses, look like they're fairly elaborate. Would there be the ability for, like, competitions to use these types of facilities? Or does it have to be restricted to just the residents or the members of the association?

Ms Challes: Auburn Bay, Cranston, and New Brighton, in particular, right now are young communities. They're open to the public. Each of these facilities is open 365 days a year. Every month they have public events such as a Stampede breakfast – it's Calgary – an Easter event, Christmas events, themed events each month typically open to the public. Each one rents out its facility

at a very low rate to Boy Scouts and Girl Guides and Brownies and that sort of thing.

Anyone can go into Cranston's facility and park by paying \$5 to get in to use the park and that sort of thing. I want to talk about Cranston for just a second. Cranston is a new building. It's 20,000 square feet on an eight-acre park with tennis courts, a hockey rink, and a full gymnasium. They have drop-in passes for \$5, and you can live anywhere in the city of Calgary and drop in.

In Auburn Bay and New Brighton as well you can live anywhere in the city to rent the facility, use the banquet rooms, participate in any of the programs and that sort of thing. The reason Tuscany doesn't open its doors quite as much is because of the saturation level, but Tuscany also has open, public events, toy and clothing sales, that sort of thing.

So each one of these communities provides that openness on a fairly regular basis. Our programming is geared towards youth programming, and I would say that our facilities are used over 70 per cent of the time for that alone, that type of recreation. We're providing a service or an amenity that the city of Calgary is unable to provide in each of these communities. That's what the residents associations bring to the table.

Mr. Lund: Just one quick question, Mr. Chairman. The \$5 that you mention for entry: do people that pay a membership fee have to also pay that \$5?

Ms Challes: No.

Mr. Lund: Thank you.

The Chair: If I could just ask the respondents to be brief as well as the members when they're asking questions, please.

Mr. Allred is next, please.

Mr. Allred: I guess that means you're going to cut me off if I ask too many questions, eh?

The Chair: Exactly.

Mr. Allred: Okay. To Mr. Pincott: is there any room for a compromise in the taxation; for instance, 50 per cent of the taxes, something of that nature for a special interest group like this?

Mr. Pincott: Well, our approach has been to discuss with the residents associations around how to reach the exemption status that is already laid out in the MGA – as Mr. Dalgleish said, there is one residents association that has already done that – which is primarily around public accessibility and reaching those kinds of thresholds. To date that has been the path that we have taken.

On that I might ask Mr. Dalgleish if he has anything further to add, but that has been our approach.

Mr. Dalgleish: I think that's accurate. We have very much been trying to work with associations to ensure – and there is a process that we're going through right now that council has asked us to do to actually provide more in the way of an understanding and information to associations about the types of things that they would need to do in order to meet that exemption status. We're more than prepared to continue working on that.

9:20

Mr. Allred: So, basically, it's all or none, then.

Mr. Pincott: Yeah.

Mr. Allred: With reference to the one association that you have given exemption to, I believe you said that there was 70 per cent participation by the community.

Mr. Pincott: The threshold, as we heard from Mr. Cust and Mr. Dalgleish, is 70 per cent.

Mr. Dalgleish: It would have met the requirements of the MGA and COPTER through our review for the use of that particular property.

Mr. Allred: Okay. Thank you.

A quick question to Mr. Cust, if I may?

The Chair: We'll come back, Mr. Allred. We've got a long list.

Mr. Allred: Okay.

The Chair: Mr. Hinman is next, followed by Mrs. McQueen.

Mr. Hinman: Thank you. I guess mine is to Alderman Pincott. First of all, it seems to me like we're splitting hairs. Justice delayed is justice denied. Why has it taken 18 months? You said that for two of those residents associations in 2008 you made the exemptions; now you're not. If you're a charter city, I think you're stating right now what you would do when, to my understanding – correct me if I'm wrong – a residential association, community association covers that entire community. Because it's on the tax roll. It is sustainable; it is being taxed. To me you're splitting hairs. Explain why this hasn't gone through. You have allowed it in the past.

Mr. Pincott: Right. A couple of things. The city didn't allow it in 2008 and 2007. That was an MGB ruling on those specific tax years.

Mr. Hinman: So that should be pretty clear.

Mr. Pincott: We're still waiting to hear about 2009 and 2011.

We are quite clear when it comes to community associations. They are exempt. Each one of these communities has a community association as well which is exempt from taxation. Community associations and residents associations are different, and they provide different programming. They also have different thresholds for access. I mean, a residents association: as we heard, a membership is oftentimes an encumbrance on ownership of the property.

Mr. Hinman: Not always, then?

Mr. Pincott: I think that there are some that – I defer on that.

Mr. Hinman: Okay.

Mr. Pincott: I say often because I'm not sure, of the 20-odd that we have, if they're all like that.

The Chair: No. They're not all like that. I wouldn't say that.

Mr. Pincott: Okay. There you go.

The Chair: I think Midnapore was an example of a community where initially it was mandatory, and then it became a voluntary thing later on.

Mr. Pincott: I moved out of Midnapore before it became voluntary.

Mr. Brazzell: I think that there are examples where tenants can also be members. Again, they wouldn't own property; they're just residents in the community.

Mr. Pincott: Again, ultimately, it is access to the facilities. It is that accessibility component. Is it providing a facility for the general public? Is the general public able to use that facility? All taxpayers? Our contention is that we currently have guidelines within the MGA and COPTER on what that looks like. If an RA doesn't meet those requirements, then they are not tax exempt.

Mr. Hinman: Thank you.

The Chair: Mrs. McQueen, please.

Mrs. McQueen: Thank you, Chair, and thank you, all, for being here this morning. Just a couple of related questions. First of all, to Ron: the MGB decision, could it have been made over a period of time? Could the petitioners, rather than doing it every year, petition for the status to be ongoing?

I guess my second is to the city of Calgary. I understand that you're wanting to follow the process and not have these kinds of things come to Private Bills. I get that process. So in understanding that the MGA will be looked at, if the decision through the MGA is made, changes in the legislation, in regard to the petitioner, would you as a city be able and willing to credit them for the years that they're talking about so that truly it would be a win for all?

So those two questions, please.

Mr. Cust: I'll answer the first question. The municipality has the opportunity to review the property itself and take a look at what the Municipal Government Act and what the community organization property tax regulation provide. That decision can be made at the local level through the assessor's office. It then can be appealed or a complaint filed, and then it gets to the Municipal Government Board. At the time the Municipal Government Board makes that decision, it's based on a decision for that tax year only. That's it. If the circumstances change, the spirit of the legislation is such that the power, ultimately, rests back with the municipality, and the tax roll becomes a new live tax roll the next year. That's why it's not ongoing into the future. The MGB made a decision this year; it doesn't carry forward.

Mrs. McQueen: I understand that, but we're looking at this with the Municipal Government Act review. Would you be taking that under consideration, as we would with other properties such as schools, hospitals, those kinds of things, where they don't have to apply for it every year?

Mr. Cust: Under the review that's certainly what we would be looking at.

As well, to address, I think, the next question that was being asked: could there be a percentage? At this time we have two different pieces of legislation that contemplate a percentage. That's certainly something that I can throw in the middle of the table for that discussion as well if you want to set that a certain, say, X number of per cent is automatic for residents associations within the legislation and move on.

Mrs. McQueen: Then to the city of Calgary the question of accrediting the petitioner.

Mr. Pincott: Well, if we're looking at going in and changing the MGA, which we're arguing is the right way to do this, I think that has implications for all municipalities across the province as well

as the province. I mean, it's municipal property tax as well as provincial property tax that we're talking about here. So I think that that would be something that, certainly, the city of Calgary can't and won't do by itself because it is a provincial government and provincial municipalities issue. I think that that is something that municipalities and the province would have to talk about and decide together.

Mrs. McQueen: So with the petitioners that are here today, you wouldn't look at something like that for them?

Mr. Pincott: Offhand, again, if we're looking at the MGA, this is province-wide. It is municipal taxes across the province, and it is provincial property tax as well.

The Chair: Mr. Kang, followed by Mr. Boutilier, please.

Mr. Kang: My questions are to Louise Challes. If one association can open it to the general public and they are tax exempt, what is holding the other associations back from opening it to the general public and getting that tax exemption?

Ms Challes: As part of that process in 2006 it was the McKenzie Towne Residents Association. I assisted in completing those forms for tax exemption. It was accepted in 2006, and they just went under review this year following quite a few meetings and our proposal for a private bill.

I'm not sure why they keep retaining the tax exemption. They are run exactly the same. It was the same developer that built it. Some of their amenities are not gated, but their building certainly is. They have an annual membership fee of \$210. They have encumbered property. They have the same guidelines that we have, so I'm not just sure why they retain their tax exemption. Like I said, I was part of that process and received that. They have the same criteria that these four have.

Mr. Kang: If the city was to exempt the RAs, all of them, then the person living in Falconridge or Forest Lawn would be subsidizing that facility because they are paying taxes on their properties, right? Okay. To be fair, it should be open to the general public. You know, you didn't answer my question: why can't they be open to the general public to solve their problems? We wouldn't be here if that was the case. What is holding them back from opening it to the general public?

Ms Challes: Well, they are open. They have several events and that sort of thing. Anyone can take a program at the residents association, so I'm not sure what you're getting at. They are open to the public. I'm not sure that someone from Falconridge would want to travel down to the southeast necessarily, but they can rent the facility. They can do all of those things.

Mr. Kang: That's what I was getting at. If you open it to the general public, I don't think that anybody from Forest Lawn or Falconridge will come down there to do a function, and that would solve your problem. If the use is 70 per cent or whatever, you know, that will meet the requirements.

Mr. Brazzell: It seems to me that it was pretty clear that, effectively, the general public really was the community that that residents association serves. The practical reality is that you're not going to go across the city to use a facility in a different community. That's the way these operate. From the Municipal Government Board's perspective it was sufficient that the people in that immediate community that the residents association served were able to use it. But over and above that, they did receive a lot of evidence –

and Louise and Chris can speak to that – about how people who resided outside of those communities could still access the facilities.

9:30

Mr. Kang: But, you know, if the facility was available to people in Falconridge or Forest Lawn, they will only get them there. I mean, if you're open to the general public – right? – that will meet the city requirements, and you will be tax exempt. So I don't see where the sticking point is here.

Ms Challes: It is open. We don't see where the sticking point is either. But it is open.

Mr. Kang: That's what I'm getting at. Maybe Mr. Pincott can answer that question. If it's open to the general public, you know, why are we here?

Mr. Pincott: Well, I think accessibility to the – oh, I'm sorry, Mr. Chairman.

The Chair: No. Go ahead, Mr. Pincott.

Mr. Pincott: Okay. I apologize.

I think the thresholds for accessibility to the public are more than making the hall available for rental or having a bake sale. I think that the MGA and COPTER are quite clear on what that looks like. The threshold, as we've heard, is 70 per cent.

Mr. Kang: Okay.

The Chair: Mr. Boutilier, please.

Mr. Boutilier: Yes. Thank you, and good morning to all groups. I'm listening with interest as a former Minister of Municipal Affairs for four years. This would be one suggestion. The Municipal Government Board did make a decision, and there is talk in the room about a review. Is the Minister of Municipal Affairs there indicating he's going to have a review? I didn't think I heard the Minister of Municipal Affairs there.

Having said that, I'd be cautious of suggesting a review at this point. What is the potential – and I would ask all of the presenters this morning to consider that as much as the issue is saturation, potentially, if we have faith in the invisible hand, would you not consider meeting the criteria as outlined under the Municipal Government Act and after a year review that? I do believe that Calgarians are smart people, and they will not travel from one end of the city to another to go to something that would remain open to the public to meet the criteria.

So why wouldn't the group consider satisfying the bureaucratic entity within the city of Calgary to meet the criteria as outlined under the Municipal Government Board, and then at that point, after a year, review it and see if that saturation actually takes place? Actually, we wouldn't even have to be here today.

The Chair: Would somebody like to respond to that? Mr. Pincott or Mr. Dalglish?

Mr. Pincott: Again, I think the city's position is quite clear, that we have thresholds around public accessibility. Mr. Boutilier does raise a valid point: meet those and get tax exempt. As we heard from Ms Challes, McKenzie Lake is undergoing the review now, and they are reviewed for public accessibility.

The Chair: Ms Challes or Mr. Brazzell, would you care to comment?

Mr. Brazzell: I think probably both of us. You know, I guess the point there is that, certainly, the Municipal Government Board, as

Mr. Boutilier referred to, felt that the threshold considerations had been satisfied to warrant an exemption. As Ms Challes has already spoken to, she thinks there is no material distinction between the situation of the one exempt residents association and these ones.

I think it's important to remember, you know, that we're talking about a situation where the practical reality is that net of board decisions these groups will be paying taxes for a number of years, and it is double taxation. I mean, when you have an amenity in a neighbourhood, if you have a lake, the value of that lake, the value of these facilities is captured in the value of the residential homes that are adjacent or proximate to or have the benefit of ready access to those facilities. So compounding everything else is that you do have double taxation here.

Mr. Boutilier: Yeah. My final note, Mr. Chair – and thank you – is that I've heard the city of Calgary talk about a review, a review, a review. Is that simply by the fact that they did not like the decision of the Municipal Government Board?

Mr. Dalglish: Mr. Chairman, the decision of the Municipal Government Board for 2008 we received, I think it would have been, in August or so of 2010. That 2008 decision is a very recent decision. In that particular year the Assessment Review Board in that case actually determined that the properties were subject to taxation. So the first level of board, the Assessment Review Board, determined they were taxable; the Municipal Government Board determined for 2008 they would be exempt.

Mr. Boutilier: But that was overruled by the Municipal Government Board?

Mr. Dalglish: That's correct, and we received that decision in 2010. The 2009 process was already under way, so we are now continuing with that process and awaiting that decision.

Mr. Boutilier: I'd be very cautious of suggesting a review, though, province-wide. It appears to me that the Municipal Government Board has made a decision that perhaps the city of Calgary – obviously, you were on the losing end of that decision, but certainly I can agree with the residents in this regard, that a decision has been made by the Municipal Government Board that really does not require a review province-wide now.

Mr. Dalglish: Mr. Chairman, I can certainly say that once we go through the process of having received the 2009 decision – and, as a matter of interest, for 2010 complaints weren't filed against these properties, and there is also an appeal process going through for 2011 – we will be looking at those decisions very carefully in conjunction with the 2008 decision to see if we get some more clarity around both the decisions and the interpretation of the legislation. We will be doing that.

Mr. Boutilier: Good luck to the residents.

The Chair: Thank you, Mr. Boutilier.

Next on my speakers list is Mr. Doerksen, followed by Mrs. Sarich, followed by Ms Woo-Paw, followed by Mr. Allred, followed by Mr. Hinman, followed by Ms Calahasen.

Mr. Doerksen, to you, please.

Mr. Doerksen: Thank you, Mr. Chairman, and thank you for the presentations here this morning. I can see that there is some precedent for the position of the petitioners and also some implication with regard to a decision on this for the broader situation not only in the city of Calgary but in the province. I guess my question would be to the petitioners. Is there something unique

about the practice or the position of the communities represented by the petitioners that differentiates them from the other communities in the city of Calgary, for example, that would be implicated were you to be successful with gaining tax exemption as a result of a private bill?

Ms Challes: Certainly. The uniqueness of these four, in particular, is that we're providing an amenity that the city is unable to provide in these communities. Additionally, the community associations in each one of these communities – they're called community leagues here but community associations in Calgary – also occupy space in each one of our buildings. Each one of the residents associations here today supports the community association, lends out their facility and their building to community association events and that sort of thing, too. So that makes us unique. No other residents association or community association is like that.

Mr. Doerksen: Within the city.

Ms Challes: Within the city.

Mr. Pincott: Again, I think that there are currently at least 28 residents associations in Calgary. These are different beasts than community associations. There's one that has achieved, as we heard from Mr. Dalgleish, tax-exempt status by using the existing legislation. There were four that were exempted prior to the existing legislation being put in place. Again, we're saying: "Let's not treat this as a one-off. If there's a desire, let's actually make legislation. Let's look at the MGA, and let's make it fair and equitable."

Mr. Brazzell: And I think we've addressed that concern. I mean, we'd have a number of years of taxation on each of these residents associations, which is effectively double taxation and which is impacting our ability to deliver services.

The Chair: Thank you.

Mrs. Sarich, please.

Mrs. Sarich: Thank you very much, Mr. Chairman. It just appears to me that there are a lot of processes pending here and opposition to the interpretation of what the actual rules are and coming forward to the Private Bills Committee for another level of adjudication when you already are awaiting another level of adjudication with the dispute that you have. I would like to know from the petitioners what steps and measures – because it really wasn't provided too clearly in your presentation – you have taken over the subsequent years to comply with what the current MGA states for what you're looking for. On the city of Calgary side, basically, if I am capturing it correctly, it's: here's what the MGA says, and if you reach this level of compliance, then you would get full consideration by the city of Calgary. So what exactly have you done to meet what's in the MGA and regulations?

9:40

Mr. Brazzell: Well, there is a lengthy chronology here, that we are just looking for quickly. Certainly, in terms of my own personal involvement, you know, I'm aware of ongoing meetings. I'll ask Ms Challes to speak more to this, but certainly just this year there was a meeting with the representatives of the assessment business unit at city of Calgary offices. There was a public consultation, which the city of Calgary hosted, where a number of the residents associations, including these four, were all present, I believe, or represented by somebody, and they spoke to their circumstances. So it's been an ongoing initiative throughout this year. Previous to that, there have been, to my mind, lengthy meetings.

I'll let Ms Challes speak to that.

Ms Challes: Since I joined the company, which was formerly Carma Developers, we have been dealing with the property tax issue, and even prior to that there were groups of residents associations that were attempting to deal with their property tax issues, prior to about 2003, 2004, 2005. Those groups were unable to come to an agreement with the city. We've had several meetings with the city since 2005 and '06. I've had several meetings with the city for each one of these residents associations in trying to come to a common ground.

Initially we had been looking for some type of reduction. We were not looking for exemption originally. In 2006 we were getting nowhere. We did get McKenzie Towne exemption status. That's when we started working with Altus Group, and they were successful in getting exemption for New Brighton for 2007 and '08 and exemption for Auburn Bay for 2008 and for Tuscany for 2008.

We've been working with the city in meeting after meeting. I've had, you know, telephone conference calls with Mr. Dalgleish, with a VP of my company in trying to resolve this issue. Our development company is going to continue to develop these types of residents associations.

Our feeling, also, is that what we bring to the community is an amenity that has a value, and taxpayers in the community are paying taxes based on the amenity and the value of that community.

Now, residents associations are also paying taxes, and we've discovered over the last few years that there are a lot of inequities. Tuscany Club is similar to Cranston. Tuscany pays about \$26,000 a year in property taxes. Now, we're all not-for-profit. Cranston was assessed at \$113,000. Their operating budget is just about \$600,000. So there are inequities. New Brighton is half the size of Tuscany and Cranston. Their property taxes are \$48,000 a year, double Tuscany's. Our lake community of Auburn Bay is \$29,000. So I'm not sure, you know, how it's all equal. We're not sure.

We've been asking the city repeatedly over the past number of years to come up with something for us. The reason the other residents associations aren't here and aren't at this point yet is strictly financial. It's cost a lot of time and money for us to get to this point and a lot of frustration. So we have been working a lot.

Mrs. Sarich: Thank you very much for that comment. Maybe I'll just close with this if I may, Mr. Chair. I guess the way I look at it is . . .

The Chair: Mrs. Sarich, we're not here to debate the thing. If you have a question, please ask the question. We're going to have an opportunity to discuss it at length. If you have specific questions of any of the parties, you're free to ask them, but I don't want to get into discussion or comments.

Mrs. Sarich: Okay. All right. I'll end with that. Thank you.

The Chair: Thank you.

Mr. Horner, you have a question, please.

Mr. Horner: Thank you, Mr. Chairman. I'm just wondering about the ownership of the facilities and the land. Is it owned by the developer? Is it owned by the association so that title is actually owned by the association?

Ms Challes: By the current residents in the community.

Mr. Horner: Okay. I hate to beat a dead horse here, but I'm still confused over what it is – and if you could be as simple in the

answer as possible – that you're not doing now that the city wants you to do to become the compliant that we keep talking about?

Ms Challes: I'm not sure.

Mr. Horner: Okay. Perhaps I could ask Alderman Pincott that question as well. What is it that they're not doing now that you want them to do?

Mr. Pincott: Mr. Horner, I'm going to defer to Mr. Dalgleish.

Mr. Dalgleish: Mr. Chairman, I believe that what it is simply a review to ensure that the properties are compliant with the Municipal Government Act and the property tax exemption regulation, which means open to the general community, as has been discussed, and not restricted by some of the restrictions that are in the community property tax exemption regulation such as restricted by way of ownership. So there are some restrictions in the regulation, and there is a requirement for openness. The review that we simply do goes through to ensure that on the openness piece there is more than 70 per cent public accessibility during the time that the property is in use and that none of that is restricted by way of ownership or other restrictions that are in the regulation. We would go through that process with the association.

Mr. Horner: Thank you, Mr. Chairman. I'm under the assumption that that review has been done, and you've determined that they are not in compliance based on the 70 per cent rule, I'm assuming. I guess I go back to the residents associations. What is it in your understanding that you're not doing that the city wants you to do that you won't do?

Ms Challes: I don't know, because I believe we are compliant, and we've proved that. We are compliant. The MGB ruled in our favour on three of the residents associations in subsequent years. Now, we are waiting for another decision, and we seem to always be waiting for that decision.

I don't know how, you know, this all works. This is all new for me, so I'm a little nervous. I'm not sure. I don't know how to answer your question. We feel we have been, and that's why we're here today. We felt the only remedy was trying to get a private bill, and we'll work on the rest of the regulations and changes and all of that later. We've spent significant time and money on trying to be compliant. We're just not being heard.

The Chair: Thank you very much.

Ms Challes: Okay. Thanks.

The Chair: Mr. Allred, please.

Mr. Allred: Okay. Thank you, Mr. Chairman. Mr. Cust, we've heard quite a bit about the delays in getting these decisions from the Municipal Government Board. Perhaps you could just outline the process. I understand the appeal has to go to the assessment appeal board of the city and then an appeal from there. Why are we waiting in 2011 for a 2009 decision?

Mr. Cust: Thank you. I'm not sure I can answer for the process of the Municipal Government Board. The chairman of that board could respond to that. I know that a number of the cases that they had backlogged they're starting to catch up on. The change to the complaint and appeal process that has been completed as a result of Bill 23 has fast-tracked a number of those. I know that the city of Calgary got through all of their appeals this year quite early, so I think that backlog is going to change very quickly. With regard

to the Municipal Government Board decisions, that's something that I think is changing as well. Does that answer your question?

Mr. Allred: Okay.

To Mr. Dalgleish: does the assessment appeal board or your department consider the decisions of the Municipal Government Board as precedents?

Mr. Dalgleish: We have a policy, Mr. Chairman, that says that, yes, we do. Sometimes we look at one year of a decision, and sometimes we will look at two to three years of a decision. In this particular case there were a couple of pieces out of the decision of the Municipal Government Board that we felt we still questioned, and we weren't yet convinced that the requirements were met. Those two pieces were around the general public issue, that we've spoken about, whether that is broader than what a community association needs to serve. The second piece was around the requirement of ownership of property within the community as a requirement for use.

9:50

For the reason that there were still questions out of the 2008 Municipal Government Board decision, which we received in 2010, and the 2009 process already being under way, we felt that the best thing to do was to let the 2009 process play out. There had not been an issue raised in 2010. In 2011 we also have a process under way. As Mr. Cust has pointed out, we will have, I think, decisions for 2011 received in 2011, and we hopefully will have the 2009 decision. So I think that with the benefit of those three years we will absolutely be able to take those decisions and hopefully have enough information to say: this is what this means going forward in respect of the existing legislation that we have inside the MGA and COPTER.

I realize that was perhaps a little longer, but I hope that answered your question.

Mr. Allred: Just a short follow-up on that. In questioning the Municipal Government Board decision, are you challenging the decision, or are you distinguishing it with new facts?

Mr. Dalgleish: Mr. Chairman, we felt for 2009 and 2011 that we could be more, I think, complete and have all of the right facts before the boards. That was a key part of what we're doing moving forward.

I think the other thing to add is that one of the choices we had as a municipality was to appeal the 2008 decision to the Court of Queen's Bench, and even though we started a process to do that, we decided not to continue with that. We let the exemption stand for 2008 and for 2009 and 2011 we will look at those decisions and have more complete information. The exemption – I realize there is a cost issue – has been there and stands for 2008.

Mr. Allred: Thank you for that complete answer.

Mr. Brazzell: Mr. Chairman, if may just briefly respond. I know we've gone through this.

The Chair: I'm sorry, Mr. Brazzell. We're very short of time here. We have about 10 minutes. I know some of our colleagues have meetings scheduled for 10 o'clock, so would you be very brief in responding please.

Mr. Brazzell: Very brief. You know, I can literally just refer everyone to page 85 of the package of materials here. If you flip to that page, you'll see the answer of the board on these two critical issues: one, what is the general public; and, two, is there a restric-

tion on use based on ownership? Again, I won't even do any more than refer you to those passages because they make it very clear that the board didn't find there were those restrictions.

The Chair: Mr. Hinman, you're next on the list.

Mr. Hinman: That's very timely because that to me is what this is about, the definition of general public. We talk about, you know, for tax exemption it's about education, health, recreation: all of the things that as municipal governments you want to encourage and get going. But it seems to me that all of a sudden what we do is tax more what we want less of and less of what we want more of. So for residents associations you seem to say: "Well, we don't want them. Therefore, we'll tax them to eliminate them." If the city had to pay the cost and if the petitioners get the costs when they win an appeal process, would that change what's going on? You didn't answer my previous question about a charter city. Does that change your ability to where we wouldn't be doing this, fighting within the city?

The 70 per cent compliance that we continue to keep whipping. Show us the data, why you're saying they haven't reached that 70 per cent compliance. It just seems to me that the general public is the problem, yet it's within the community. All residents in that community are paying the taxes and have the facility up and running for their benefit. They allow other people to come in for the education process, for the recreation, and for the health, so I'm really at a loss on why we're going through this other than perpetuation of government and costing taxpayers a lot of money.

The Chair: Would you care to respond, Mr. Pincott or Mr. Dalgleish?

Mr. Pincott: Sure. First off, nobody has ever said that we don't want residents associations and that we're trying to tax them out of existence. Basically, the city is operating under the MGA. It's the piece of legislation that we operate under, and we are very clearly trying to operate under that. We are very clearly saying: change the MGA, don't do a one-off on four residents associations or residents associations that are built by different developers. Don't do one-offs. Let's change the MGA, which is the legislation that we operate under.

If we are a charter city, then we are no longer operating under the MGA, and we would have those abilities to address this. I think our point is that when it comes to these private acts before you, rather than dealing with it as one-offs, let's actually look at the governing legislation and make it so that we're dealing with everybody. We are operating under the legislation that we are mandated to operate under.

Mr. Hinman: Just briefly, the MGB says that they have met the general public definition, but you're not accepting that. As Mr. Dalgleish said, basically, even though they say that they've met the definition – and this is what it's about, in my mind, unless we're misunderstanding. It's about general public access.

The Chair: Well, Mr. Hinman, we're not here to debate the issues at the present time. Do you have any further questions?

Mr. Hinman: Is it not about general public? Is that the definition?

Mr. Pincott: It is completely about general public.

The Chair: Ms Calahasen, very quickly, please.

Ms Calahasen: If you are operating under the Municipal Government Act, then why is it that you will not accept the decision of the Municipal Government Board?

Mr. Pincott: The MGB makes decisions, as we heard from Mr. Cust and Mr. Dalgleish, on a year-by-year basis and not overarching legislative direction. It makes a decision on a year-to-year basis based on the information that is before them.

As we heard from Mr. Dalgleish, the city's assessment department is looking at what the MGB said. The city has felt that we could give them more information, clearer information on subsequent appeals. We also know that the MGB appeal process, as we heard, drags out for a couple of years. It is being tightened up. Responding and addressing a 2008 appeal that didn't actually land until the end of 2010, you know, is part of it. That's part of the delay in the process.

So the city is recognizing that it can be clear on some of its points. We'll see in 2009-2010. The tax assessments on these residents associations in 2010 was not appealed.

The Chair: Thank you, Mr. Dalgleish.

Mr. Kang, you're the final speaker.

Mr. Kang: Thanks, Mr. Chair. What changes do you think we will need to make in the MGA to satisfy the city and the RAs? Is there any draft we have, or is there a proposal we have? If, you know, now they are not in compliance with the MGA, what will satisfy both parties? What changes are we going to make?

Mr. Cust: Thank you, Mr. Chairman. Basically, the legislation in the Municipal Government Act provides an opportunity for us to set out within the regulation any other items that meet the qualifications and conditions set out in this regulation and any other property that is described and that meets the qualifications and conditions in the regulation. I would suggest that if our minister and his colleagues would like this to be reviewed, then in the regulation in part 3 we would make the change about properties under 362(1)(n). We'd bring in a provision that would define the residents association as something else unique, define what it needs for its general public and that it has a unique situation different from the other associations. Then under section 15 we would add that provision in there.

Mr. Kang: Thank you, Mr. Chair.

The Chair: Well, I want to thank the petitioners for the very good presentation and the respondents – Mr. Pincott, Mr. Dalgleish, and also Mr. Cust – for the excellent information that you brought to the committee this morning. I'm sure that that'll help us in our deliberations.

I want to let the petitioners know that the committee is going to meet again on April 26 to deliberate on these bills and that you'll be advised in due course of the committee's decision in that regard.

Thank you very much for your attendance today, and you may leave.

Mr. Pincott: Thank you, Mr. Chair.

Mr. Brazzell: Yeah. Thank you very much for everyone's time this morning.

The Chair: I would ask for a motion to adjourn at this time. I think Mrs. McQueen had her hand up first. All in favour? Opposed? That's carried. Thanks.

[The committee adjourned at 10 a.m.]

