

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 [the Act].

between:

***Narland Properties (4th Avenue) Ltd.  
(as represented by Linnell Taylor Assessment Strategies), COMPLAINANT***

and

***The City of Calgary, RESPONDENT***

before:

***J. Dawson, PRESIDING OFFICER  
R. Roy, MEMBER  
B. Bickford, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board [CARB] in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>067017004</b>
<b>LOCATION ADDRESS:</b>	<b>395 7 Street SW</b>
<b>LEGAL DESCRIPTION:</b>	<b>Plan A1, Block 12, Lots 21-30</b>
<b>HEARING NUMBER:</b>	<b>65887</b>
<b>ASSESSMENT:</b>	<b>\$ 20,940,000</b>

- [1] This complaint was heard on the 20<sup>th</sup> day of July, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 3, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 10.
- [2] Appeared on behalf of the Complainant:
- J. Mayer                      Agent, Linnell Taylor Assessment Strategies
- [3] Appeared on behalf of the Respondent:
- Y. Wang                      Assessor, City of Calgary
- [4] The following individual was present for all or part of the proceedings and did not appear on behalf of a party:
- R. Crowley-Kampel    observer

### **SECTION A: Preliminary, Procedural or Jurisdictional Issues:**

- [5] No procedural or jurisdictional matters were raised.

### **SECTION B: Issues of Merit**

#### **Property Description:**

- [6] Constructed in 1975, the subject – 395 7 Street SW is located in the downtown west-end. The property is comprised of two buildings joined together with a common underground parking structure. The first building is a residential tower with eight stories containing 92 bachelor suites and one one-bedroom suite. The second building is a ten-storey office building.
- [7] The Respondent prepared the office tower assessment showing 83,337 square feet of office space rated as a 'B-' quality, 171 square feet of retail, 72 enclosed parking stalls, and 11 surface parking stalls. The residential tower assessment was prepared using a Income Approach with a Gross Income Multiplier. The Complainant was not challenging the residential assessment. However, there seemed to be a variety of values before the Board. The site has an area of 30,822 square feet.

#### **Matters and Issues:**

- [8] The Complainant identified one matter on the complaint form:
- Matter #3 -        an assessment amount*
- [9] Following the hearing, the Board met and discerned that these are the relevant questions which needed to be answered within this decision:

1. *What is the correct assessment attributed to the residential class?*
2. *What is the correct capitalization rate for the non-residential class portion?*
3. *What is the correct exempt portion of the assessment?*
4. *What impact does the sale of the subject have during the valuation period?*

**Complainant's Requested Value:**

- \$17,650,000

**Board's Decision in Respect of Each Matter or Issue:**

***Matter #3 - an assessment amount***

**Question 1 What is the assessment attributed to the residential class?**

- [10] The Complainant provided information (C1 pp. 6, 14, 17, 18 and 26) that indicates the residential portion of the subject is assessed at \$7,452,648. The Complainant shows a value of \$7,450,000 (C1 p.21), and a 2012 Property Assessment Notice (C1 p. 23) reports a value of \$6,910,200.
- [11] The Respondent's 2012 Property Assessment Notice (R1 p. 6) also shows a value of \$6,910,200 while the value of \$7,452,648 is reported in the Non-Residential Properties – Income Approach Valuation as a lump sum adjustment (R1 p. 32).
- [12] Both parties agree the correct assessment is \$7,452,648 which should be the value presented on the 2012 Property Assessment Notice. Whereas the actual taxes paid for residential is substantially less than that of non-residential, the correct figure must be shown on the assessment notice.
- [13] The Board determined the error on the 2012 Property Assessment Notice appears to have been generated by the input in the Property Assessment Summary Report where 33% is attributed to residential with a total assessment of \$20,940,000. This calculation of 33% seems to have been an estimate rather than an actual percent; however, real tax dollars are contingent on this figure being correct. The Board finds that in these rare situations the rounding should be in favour of the taxpayer not the municipality. If the assessment is confirmed the percentage for residential would be 35.6% or 36% if whole numbers are required.
- [14] **The Board finds the final assessment should reflect a value of \$7,452,648 for the residential portion. The Board in this case adjusted the assessment of the non-residential portion only, therefore the correct percentage now is 42.7% or 43% if whole numbers are required.**

**Question 2 What is the correct capitalization rate for the non-residential class portion?**

- [15] The Complainant provided 21 pages of information and argument to support their request (C1 pp. 1 through 21). Their analysis concludes that the sale price in December 2010 is

the best indicator of value for the July 31, 2012 valuation date.

- [16] The Complainant showed the Board the history of transactions involving the subject and provided evidence of higher than normal capitalization rates (cap. rates) due to its unique mixed use design. The Complainant argued potential purchasers usually have a niche in either residential investments or commercial office investments and few buyers have experience in both which results in a higher cap. rate for financing and for risk tolerance.
- [17] The Respondent showed the Board how the office tower portion of the property compared to other similarly graded office towers. The Respondent failed to recognize the unique structure of the property with its residential tower and made the assertion that it traded on the open market in the same manner as single use properties.
- [18] Neither the Complainant nor the Respondent provided an alternative approach to value and neither party found concern with the typical factors other than the cap. rate.
- [19] **The Board finds the assessment of the subject to be incorrect. If the Respondent chooses to maintain the same valuation approach; then the only component that can be adjusted to arrive at the correct assessment is the cap. rate. The Board finds that the assessed cap. rate will need to be altered to 10.09% in order to arrive at the correct assessment if all other factors are to remain as presented.**

**Question 3    What is the correct exempt portion of the assessment?**

- [20] The Complainant provided a requested 2012 assessment calculation with a value attributed to the exempt portion of \$173,092. This exempted space is calculated under a separate roll number 201695269 which is not under complaint. The CARB has no authority to alter an assessment which is not under complaint.
- [21] **The Board finds the exempt portion of the property must remain as assessed at \$224,500.**

**Question 4    What impact does the sale of the subject have during the valuation period?**

- [22] The Complainant provided evidence of a sale involving the subject property on December 13, 2010 (C1 pp. 31-42). The evidence indicates that the sale was a 'Market' arm's length sale (C1 p.31); with no indication of a trade, partial interest, special financing or unduly motivated parties.
- [23] These facts were not disputed by the Respondent.
- [24] The Complainant attempted to make an adjustment for time to the July 1, 2011 valuation date; however, found no evidence of a change in market.
- [25] The Respondent provided no evidence to convince the Board that a time adjustment was required.
- [26] The Respondent provided evidence of the asking price (R1 p.14) of \$23,200,000. The logic put forth by the Respondent is that the assessment is midway between asking price

and actual selling price therefore it is a correct assessment. The Board is unaware of any precedence for that position.

- [27] The Board is conscious of past decisions wherein the Board (MGB 036/06) and Court of Queen's Bench (697604 *Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512) have correctly found that a market sale of the subject near the valuation date is the best indication of value. In fact the Board in CARB 2790/2011-P found the *post facto* sale of the subject was the best indication of value in the 2010 assessment year.
- [28] **The Board finds the sale on December 13, 2010 of \$17,650,000 is the best indicator of actual market value on July 1, 2011 and reduces the sale price to a truncated value of \$17,420,000 to recognize the tax exempt assessment of \$224,500.**

**Board's Decision:**

- [29] After considering all the evidence and argument before the Board it is determined that the subject's taxable assessment is changed to a value of \$17,420,000, which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 15<sup>th</sup> DAY OF Aug 2012.

  
J. Dawson  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1.	C1 Complainant Disclosure – 77 pages
2.	R1 Respondent Disclosure – 73 pages

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

**Municipal Government Board use only: Decision Identifier Codes**

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Capitalization Rate