

**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:

1182604 Alberta Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. Rankin, MEMBER

J. Joseph, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	059060301
LOCATION ADDRESS:	1616 20A Street N.W.
HEARING NUMBER:	62799
ASSESSMENT:	\$637,500

This complaint was heard on 23th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- Diane Rach (owner)

Appeared on behalf of the Respondent:

- Blair Brocklebank

Procedural or Jurisdictional Matters:

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. No jurisdictional or procedural matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is located at 1616 20A Street N.W. It fronts onto 16th Avenue N.W. (TransCanada Highway) and is located between commercial properties to the east and residential properties to the west and south. This house was originally constructed in or about 1955, but has since been renovated and is being used as a birth center. The renovations were modest and included adding bathrooms on the main level, and modifying the entry. The area above grade is 1506 square feet, with much of the basement finished. There is a gravel parking area at the back of the property. Access and egress to the property via 20A Street N.W. is only via the east bound lane of 16th Avenue N.W.

The property is assessed as a house conversion by the City.

Issue:

1. Is the assessed value equitable?

Complainant's Requested Value: \$425,000

Board's Decision in Respect of Each Matter or Issue:**1. Is the assessed value equitable?**

The Complainant stated that she met with the Assessment Department during the consultation period and was told that while the City was changing its approach and would be assessing the subject property using their new home conversions approach, that this was not going to change the assessed value appreciably. When the Assessment Notice arrived, the Complainant was surprised to see the assessment increase by about 50% from 2010. The Complainant spoke to the Assessor and was not given any details about how the assessment model for home conversions worked, other than it was based on sales of other similar properties across the City. The Complainant noted that in previous years, the property was assessed as a residence and then given an adjustment for the commercial use.

The Complainant stated that the Direct Control zoning on the property is very restrictive. It was her interpretation that because of the zoning, if the property was not used as a birth center that it would default back to a residential property. The zoning approval specifically defined the activities allowed under a birth center and clearly does not allow the use of the property for office or medical uses. As such, the Complainant argued that if the property was put on the market, that it would not sell as a house conversion – commercial property, but would compete with other residential homes in the area. Therefore, to assess the property other than a residential property was not appropriate and unfair.

The Complainant then presented six equity comparables showing neighbouring homes and their assessment (Exhibit C1). She stated that the most comparable property was the house at 1615 20A Street N.W. located across the street from the subject. It was a similar type of home built at about the same time as the subject and has received some minor renovations. This house was also exposed to the traffic noise from 16th Avenue N.W., as the noise attenuation fence did not extend along this property. Its 2011 assessment was \$399,500. These equity comparables indicate that the adjustment for traffic noise is about -23%. A comparable located at 1608 20A Street backs onto a commercial area and specifically the motel that is also adjacent to the subject. The equity comparables indicate that the adjustment for being next to a commercial area is -10%. Using these equity comparables, the Complainant calculated that a fair assessment for the subject was \$425,000.

The Respondent presented four sales comparables for house conversions in the general area (page 18, Exhibit R1), with two of the four zoned Direct Control. These four comparables were all older than the subject with smaller lot size and smaller above ground area. The 2011 assessments on these comparables ranged from \$510,000 to \$839,500. The Respondent noted that all four properties indicated a "traffic" influence, but that for house conversions, no adjustment was applied for this influence. The Assessment to Sale Price ratio (ASR) ranged from 0.80 to 1.11, with an average of 1.00 demonstrating that the assessed value derived by the model did reflect market value.

The Respondent then presented three equity comparable (page 31, Exhibit R1) of house conversion in the general area, all with Direct Control zoning. These three comparables were all much older houses than the subject, two on much smaller lots and one on a much larger lot. The assessments ranged from \$434,000 to \$923,000.

The Respondent also presented three residential equity comparables (page 32, Exhibit R1) with assessments ranging from \$547,500 to \$645,000. All of these properties received a negative adjustment for traffic noise. The Respondent then presented three sales of residential properties (page 34, Exhibit R1) to demonstrate that the Assessment to Sale Price ratio was very near 1.00 and that the model used to derive the assessed value of residential properties was indeed accurate.

The Complainant questioned the comparability of many of the comparables presented by the Respondent. A key aspect of this questioning was to demonstrate that all the house conversion comparables enjoyed a much less restrictive zoning than the subject and that was reflected in their value. The Complainant also stated that the demand for a birth centre property is virtually non-existent, as the subject birth centre is the only such public facility in all of western Canada. Furthermore, the business has not shown a profit to date, therefore would not be purchased for its cash flow.

Board's Decision:

The Complainant's case is based on the zoning of the property and how restrictive that zoning may be. A copy of that zoning document, Bylaw #43Z94 Amendment #94/004 was included in its entirety in Exhibit R1 (page 38-40). This bylaw shows that the existing zoning was changed from R-1 (Residential District 1) to DC (Direct Control). The bylaw states:

"The permitted and discretionary uses of the R-1 Residential Single-Detached District shall be permitted and discretionary uses respectively, with the additional discretionary use (with certainty of use) of a birth centre within the building existing on the site on the date of passage of this By-law.

For the purpose of this by-law, a "birth centre" means a building used to provide prenatal care and education, and maternity assistance to healthy mothers while giving birth, but does not include any other form of medical clinic."

The bylaw then addresses Development Standards, and states the following:

"The General Rules for Residential Districts contained in Section 20 of By-law 2P80 and the Permitted and Discretionary Use Rules of the R-1 Residential Single-Detached District shall apply unless otherwise noted below.

(a) Birth Centre

The birth centre use may be accommodated only within the building existing on the site on the date of passage of this by-law plus the conversion or reconstruction of the existing garage with a single level addition above.

(b) *Parking*

A minimum of 6 off-street parking stalls shall be provided for the birth centre with access and egress from the abutting land to the east.

(c) *Signage*

Signage shall be limited to one free-standing 1.5 feet high and 4.0 feet long, which may be illuminated, identifying the centre and situated approximately 1 foot above grade within the northerly yard adjacent to 16 Avenue N.W.

(d) *Future Addition*

The conversion or reconstruction of the existing garage or the construction of an addition above the garage, or both, for the birth centre usage shall require approval of a discretionary use development permit.

(e) *Medical Waste*

All bio-medical waste shall be disposed of in accordance with the standards established by the authority having jurisdiction."


The Board noted that the zoning is very restrictive and limits the use to that of a birth centre, as defined within the by-law. The Direct Control zoning in place did not alter the R-1 Residential Single-Detached District other than to add the discretionary use of a birth centre. The zoning by-law is quite clear in its definition of a birth centre, which would not allow the use to be expanded to include a medical clinic or office. The subject zoning is more restrictive than most other house conversion properties. Typically the zoning on a house conversion allows for a range of uses similar to the use in place. This is not the case with the subject property.

Based on the Board's interpretation of the zoning by-law, the Board concludes that the subject property is atypical of most other house conversion properties. Therefore, it is not properly a member of this category for assessment purposes. For this reason, the Board is of the opinion that the most comparable equity comparables are those presented by the Complainant. Those comparables are located in the immediate area around the subject and support the Complainant's requested assessment of \$425,000. The Board therefore concludes that the assessment be reduced to \$425,000.

Board's Decision:

The Board reduces the assessed value to \$425,000.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF September 2011.


Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Submission
2. R1	Respondent Disclosure

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.*