

**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:

Judy K. Wong Professional Corporation, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

I. Weleschuk, PRESIDING OFFICER

J. Joseph, MEMBER

J. Rankin, 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:	058081605
LOCATION ADDRESS:	1635 – 9 Street N.W.
HEARING NUMBER:	62505
ASSESSMENT:	\$512,000

This complaint was heard on 23rd day of August, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *Joel Mayer*

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. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. 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 1635 – 9 Street N.W., along 16 Avenue N.W. (TransCanada Highway) in the Rosedale community. While the address indicates the property is on 9th Street N.W., the street and alley are blocked and do not allow access from 16th Avenue. Access and egress into the subject is via an east-bound lane of 16th Avenue. The property is a house built in 1946 and since converted into and currently used as a law office. The subject is owner-occupied. The footprint of the building is about 934 square feet (ft²), with an assessed area of 1,840 ft² including the main and lower level. Parking is provided via a gravel lot on the west side of the subject. Because of the configuration of the building on the lot, the north side of the house has direct exposure to 16th Avenue. The majority of the signage is on the front of the building, facing east.

Issues:

1. What is the equitable market value of the subject property for assessment purposes?

Complainant's Requested Value:

\$400,000

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

The parties agreed with the details of the subject property. The only issue in dispute was the assessment of the subject property and whether it was equitable based on other comparable properties.

1. **What is the equitable market value of the subject property for assessment purposes?**

The Complainant stated that the assessment had increased from \$481,000 in 2010 to its current value of \$512,000. This increase was as a result of the City changing how it assesses the subject property, and specifically creating a new assessment category for "house conversions". As a result of this change in assessment methodology, the subject is now assessed at considerably more than similar properties in the area. The basis of selecting comparable properties was that they were properties that would compete with the subject on the market, in other words had the same use or utility as the subject.

The Complainant presented four equity comparables (page 5, Exhibit C1) along with supporting information describing each of these comparables. Comparable Sales 1 and 2 are commercial buildings located on 16th Avenue, across the avenue from the subject and within a block or two of the subject. The Complainant opined that both these were superior to the subject and were assessed at \$166.87 and \$86.39 per square foot of building area respectively, or \$68 and \$69 per square foot of lot area. The Complainant suggested that Comparable Sales 3 and 4 were house conversions in the area, located on 16th Avenue N.W. and Centre Street NW respectively. They were assessed at a rate of \$132.46 and \$150.89 per square foot of building area respectively, or \$92 and \$71 per square foot of lot area respectively. The subject was assessed at \$278.26 per square foot of building size, or \$85 per square foot of lot area.

In his analysis, the Complainant stated that more attention was paid to the actual assessment than the assessment rates. He stated that the assessed value of Comparable 1 was \$408,000 and Comparable 2 was \$400,000. Both these properties could be used for professional offices. Comparable 1 had been in such a use in the past, while Comparable 2 was currently used as a dentist office. Since these two properties compete directly with the subject in the market, the Complainant argued that the subject should be assessed at a similar value, otherwise the subject was disadvantaged. Based primarily upon Comparables 1 and 2, the Complainant concluded that the appropriate and equitable assessment for the subject is \$400,000.

The Respondent stated that the approach used in previous years to value house conversions understated their market value. In 2011, the City created an assessment class specifically for house conversions, based on sales data of such properties. The model uses a sales comparison approach to derive the assessed value.

To support the assessment, the Respondent provided four "Sales Comparables House Conversion" (page 15, Exhibit R1). These were all sales of house conversion in the general area, between July 2008 and October 2009, and were somewhat similar in size and improved area. The sale prices ranged from \$460,000 to \$894,000. The 2011 assessed values ranged from \$512,000 to \$839,500. The Respondent stated that the subject is assessed at \$512,000, at the low end of the range.

The Respondent also provided four "Equity Comparables House Conversions" (page 28, Exhibit R1). These were all located in the Tuxedo community and along Centre Street NW, north and east of the subject. These four equity comparables were all of similar age to the subject, similar lot sizes and similar above ground improved area. The assessed values ranged from \$467,000 to \$713,000.

The Respondent provided three residential comparables of recent sales of single family houses (page 32, Exhibit R1) similar to the subject in the Rosedale community. The purpose of this evidence was to show that the assessed value was also equitable compared to single family residential properties in the subject community. The sale prices ranged from \$548,000 to \$636,000, with the 2011 assessed values ranging from \$514,000 to \$621,500.

Board's Decision:

The Complainant did not present any evidence to indicate that the subject assessment was inequitable compared to other properties in the house conversion category. There was no evidence presented to suggest that the subject was in any way atypical for the house conversion category. Based on the evidence presented by the Respondent, the Board concludes that the subject property is equitably assessed within this assessment category used by the City.

The larger issue is whether the subject is assessed equitably compared to other properties in the subject area that may be of a similar or potentially similar use, but are different building types (in different assessment categories). Does equity require that all properties be assessed at the same rate or on the same basis simply because they are located in the same area or may have a similar use?

Section 4(1) of Matters Relating to Assessment and Taxation Regulation clearly states that the valuation standard for a parcel of land is market value unless the parcel is used for farming operations. Section 293(1) of the Act requires that the assessor prepare an assessment in a fair and equitable manner, applying the valuation and other standards set out in the regulations. An issue of equity arises when a property assessed at a value that reflects its actual (market) value is well above or well below (outside) the assessed value range compared to other similar properties. This is the test or direction that flows from *Bramalea v. British Columbia*, 2006 BCSC 424.

The Board interprets this to mean that the subject property must be assessed equitably compared to other similar properties. Therefore, the test of equity is based on defining and identifying appropriate "similar" or comparable properties. Presumably, by creating its assessment categories, the City sorts or allocates properties into groupings of similar properties based on host of market characteristics. If the market, via its pricing mechanisms, creates distinct categories of properties, then it is acceptable for the assessor to use such market created groupings as assessment categories. Such market derived assessment categories should, in theory, result in assessments that accurately reflect market value.

The Complainant did not challenge the creation of the house conversion assessment category. The Complainant merely argued that the assessed value obtained for such properties was not equitable compared to other types of properties (properties in other assessment categories) in the same general area and in the same or potentially the same use. The Board interprets this argument to mean that location and/or use of a property should be the over-riding factor in determining how a property is assessed. The Complainant did not address whether this approach would be more equitable, but merely indicated that the subject's assessment would be similar to four properties in the subject area that have or may have a similar use, and presented as "comparables".

The Board is not convinced that different classes of properties located in proximity to one another and in the same or potentially same use requires that these properties all be assessed on a similar basis, regardless of any other factors that may influence actual value. It is the Board's opinion that the test for deriving equity comparables requires an assessment of many more characteristics. Arguing equity within an assessment category is a much easier issue than arguing equity among two or more assessment classes. The evidence presented by the Complainant was not sufficient to suggest that the subject house conversion, assessed as such in a house conversion property category, is inequitably assessed compared to other types of properties in different assessment categories. Other than proximity and potential use, other factors determining the comparability of the subject with the "equity comparables" presented was not explored by the Complainant. [In fact, if proximity or use (actual or potential) were the only factor(s) determining comparability, tax payers would be successful in arguing that the lowest assessment rate in an area be applied to all properties in that area. This argument would cascade back and forth across the municipality until all properties were assessed at one rate, and not reflect market value for the majority of these properties. Surely applying one rate to all properties in a municipality is not what is meant by equity and such a result would all but obliterate the principle of assessment reflecting market (actual) value.]

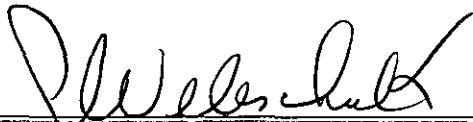
In discussion with the Complainant, the Board is of the opinion that his Comparables 3 and 4 are not house conversions, so are not similar to the subject. Comparables 1 and 2 are purpose built commercial properties that are very different in character and characteristics compared to the subject.

The issue of whether the assessment was equitable compared to other properties in the house conversion assessment category was not explored by the Complainant. The Respondent provided evidence to show that indeed the subject assessment was equitable compared to other properties in this assessment category. The Complainant failed to convince the Board that the "equity comparables" presented were indeed sufficiently comparable. The Board concludes that the Complainant did not establish that the subject's assessment is inequitable, therefore has not shifted the onus onto the Respondent. The Board confirms the assessment.

Board's Decision:

The Board confirms the assessed value of \$512,000.

DATED AT THE CITY OF CALGARY THIS 22 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 Disclosure
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.*