

**CALGARY
COMPOSITE 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:

Luxor Capital II Corp. (as represented by Altus Group Ltd.), COMPLAINANT

And

The City Of Calgary, RESPONDENT

Before:

D. H. Marchand, PRESIDING OFFICER

D. Cochrane, MEMBER

D. Julien, 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:

LOCATION ADDRESS: 803 – 15 AV SW

LEGAL DESCRIPTION: Plan A1; Blk 110; Lots 17 – 20

HEARING NUMBER: 63461

ROLL NUMBER: 067187401

ASSESSMENT: 1,370,000

This complaint was heard on 28th day of September, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta; Boardroom 2.

Appeared on behalf of the Complainant:

- S. Sweeny - Cooper

Appeared on behalf of the Respondent:

- L. Wong

Procedural or Jurisdictional Matters:

No preliminary matters were raised by the Parties. Both Parties swore an oath. No objection was raised as to the composition of the CARB panel.

Prior to the opening of the hearing the Complainant advised that only 1 of the 9 points filed as Grounds for Appeal within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* would be argued at this hearing.

They will argue the 5th point described as:

The assessment was incorrectly calculated based upon the unfounded assumption that the highest and best use is as redevelopment land and that the assessment is in excess market value and inequitable compared to similar competing properties. There is no reasonable probability that the redevelopment of the subject would be financially feasible, physically possible and legally permissible as of the relevant assessment dates.

Property Description and Background :

- The subject is identified with a sub-property use code CS0501 – Office Conversion (SFD) within the Beltline Community.
- The land use designation is Direct Control District.
- The parcel has a site area consisting of 13,040 square feet. It is improved with a converted house with 4,102 square feet of rentable area. Plans show 2,237 square feet of main floor and 1,450 square feet of upper floor office space. The space has been identified as "B" quality. The last renovations were done in 2007 and are as set out in the Bylaw 9M2009.
- Bylaw number 9M2009 designates the Nellie McClung House as a Municipal Historic Resource.
- In August of 2004 the subject was purchased by the current owners for \$1,100,000.

Issues:

1. Does the direct comparison approach that compares the subject to similarly sold house to office conversions yield an assessment at the market value standard or should the capitalized income approach which uses the typical inputs employed within the "B" office be applied to yield an assessment at a market value standard?

Legislation:

The Municipal Government Act, R.S.A. 2000, c. M-26

1(1) In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

Matters Relating To Assessment And Taxation Regulation (Ar 220/2004)

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Party Positions:

The Complainant submits that the subject serves as an office and as such should be valued as similar "B" Class offices with a rental rate of no more than \$14.00 per sq. ft., a vacancy rate of no less than 13%, and a capitalization rate of no less than 8.5%. Based on these inputs plus a vacant space shortfall and non-recoverable allowance the valuation conclusion is **\$490,000**. (Reference exhibit C-1 page 61)

The Complainant acknowledged that the parameters applied are those that the Municipality has used in the assessment of low rise office buildings within the subject's location and provided no support for the parameters used as this was the methodology used by the Municipality in previous assessment years.

An interim ruling relative to the Complainant's failure to show that the assessment is incorrect was not acted on as the CARB was interested in the foundation of the assessment. This interest was as a direct result of the Complainant's presentation.

The Respondent advised that in 2011 the Municipality choose to compare the subject to other similarly converted "house to office properties" that sold presently. Four such properties were provided to the CARB:

Location of Comp.	Transaction Date	Sale Price	2011 Assessment	Comment
Subject	2004-08-04	\$1,100,000	\$1,370,000	
1015 - 13 Ave. SW	2010-06-07	\$633,000	\$635,000	1/3 the space
802 - 13 Ave. SW	2010-06-01	\$800,000	\$833,500	Diff. era & age
816A - 13 Ave. SW	2009-12-15	\$1,755,000	\$1,610,000	20% more space
903A - 13 Ave. SW	2010-03-09	\$1,400,000	\$1,370,000	Sold in 2006 for \$1,000,000

The Respondent indicted that the conversion of house to office space is not uncommon within the Subject's location and that the direct sales comparison methodology provides reasonable estimates of market value. The sale of the subject itself in 2004 indicates income approach parameters similar to the "B" office building are unreasonable.

Board's Decision:

The Complainant's request for an assessment of \$490,000 is not supported by the market place. The sales of similarly converted house to office properties in the same location as well as the subject's sale price in 2004 for more than a million dollars supports the assessment amount of \$1,370,000. An indication of an upward market value trend is shown by the sale and resale of property at 903A – 13 Ave, SW.

The assessment is confirmed at **\$1,370,000.**

DATED AT THE CITY OF CALGARY THIS 28 DAY OF October 2011.



D. H. Marchand
Presiding Officer

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

NO.	ITEM
1. C1	Evidence Submission of the Complainant
2. R1	Assessment Brief of the Respondent

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.*

For MGB Administrative Use Only:

Decision No. 2286 -2011-P		Roll No. 067187401 Calgary DHM		
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Retail	Stand alone	Development land	Zoning