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-26.1, Section 460(4).

between:

Judy Sui Fong Low, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. Helgeson, PRESIDING OFFICER
Y. Nesry, MEMBER
D. Julien, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of the Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 381005404

LOCATION ADDRESS: 12 Sagehill Garden N.W.

HEARING NUMBER: 60326

ASSESSMENT: $2,370,000

This complaint was heard on the 16th day of September, 2010 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *Judy Sui Fong Low*

Appeared on behalf of the Respondent:

- *Wanda Wong*

Property Description:

The subject property is single-family dwelling on a 3.96 acre country residential parcel. Ms. Low has owned the property for ten years. In 1989, the subject property was annexed to the City of Calgary from the Municipal District of Rocky View. Two years ago, with consent of the owner, the property was re-zoned to low-rise multi-residential in accordance with the City's plans for the area, but there was no commensurate increase in the assessment until this year. Subsequent to the re-zoning, the City of Calgary provided water to Ms. Low's property.

Issues:

1. Does s.460.1(1) of the *Municipal Government Act* bar the complaint from being heard by a Composite Assessment Review Board?

2. Did the Complainant state a reason why she did not agree with the assessment?

3. Did the Complainant fail to request an alternative value, and the information to support it?

4. Does s.11 of the *Matters Relating to Assessment and Taxation Regulation* (*"MRAT"*) apply where a complainant consented to "an action taken under Part 17 of the *Act*"?

5. If s.11 of MRAT does apply, what would be a fair and equitable assessment for the subject property?

Background

The subject property was originally assessed at $617,000 for the 2010 tax year. On March 25th, 2010, an amended assessment notice was sent to the Complainant. The amended assessment notice increased the assessment to $2,370,000. On the 13th of April, the Complainant called the City of Calgary regarding the amended assessment, and on May

19th, the Complainant filed a complaint. On the 26th of August, the Complainant sent photographs of the subject property to the City of Calgary. The Annexation Order is not an issue in this matter.

Complainant's Requested Value:

The Complainant did not specify a requested value, but stated: "We are a single home on a small acre only."

The Board's Decisions on the Issues:

Issue 1:
Although neither party raised this issue, this panel nevertheless considered it advisable to deal with it. It is the decision of the panel that Section 460.1(1) of the Municipal Government Act ("the *Act*") does not bar the present complaint from being heard before a Composite Assessment Review Board. This is because the jurisdiction of Local Assessment Review Boards regarding assessment complaints is confined by s. 460.1(1) to complaints about *"(i) residential property with 3 or fewer dwelling units, or (ii) farmland, or (b) a tax notice other than a property tax notice."* Composite Assessment Review Boards have jurisdiction to hear complaints with respect to all other property save linear property: s.460.1(2).

This means that Composite Assessment Review Boards hear assessment complaints on a greater variety properties with substantially higher values than do Local Assessment Review Boards. That being so, is it reasonable to suppose that the legislature intended that Local Assessment Review Boards would hear complaints arising from assessments of residential property zoned for multi-residential use, and worth millions of dollars, simply because there happened to be "three or fewer dwelling units" on the property? This panel thinks not.

It is the view of this panel that the intent of s.460.1(1) is that Local Assessment Review Boards have jurisdiction to hear complaints regarding residential property with three or fewer dwelling units, and that could *legally accommodate* (panel's italics) no more than three dwelling units. If it was intended that Local Assessment Review Boards could hear appeals involving multi-million dollar multi-residential property, what conceivable purpose would be served by confining their jurisdiction to property containing three or fewer dwelling units? Clearly, this panel has jurisdiction to hear this complaint.

Issue 2:
The Complainant appeared to be having difficulty understanding what was required of her at the hearing; she was clearly not familiar with the process. On her complaint form, the Complainant stated: "We are a single home on small acre only." Implicit in that statement is a question, i.e., how could my assessment possibly be so high? That is an eminently reasonable question given the fact that the assessment of the Complainant's residence suddenly and unexpectedly increased to almost four times the property's original assessed value for 2010. It is the finding of this panel that the Respondent's reason for her complaint

is that she believes her assessment is too high, hence incorrect.

Issue 3:

With respect to the matter of a requested value, or information to support a requested value, the Assessor pointed out that nothing was set down in writing by the Complainant on the complaint form, as required by s.2(1) of the *Matters Relating to Assessment Complaints* Regulation. Section 5(1) of the aforementioned regulation prohibits assessment review boards from hearing "any matter in support of an issue that is not identified on the complaint form." Nevertheless, this panel has discretion, and may use that discretion for the purpose of getting to the heart of the matter, to dig a little deeper than the surface of the complaint form, particularly where an inexperienced or unsophisticated complainant appears before it. With respect to issue three, the panel finds as follows.

Firstly, because the subject property was originally assessed at $617,000, the Assessor must have believed that that was a fair and equitable assessment for a single-family property, given the circumstances that prevailed at the time. The Complainant must have believed that too, for she filed a complaint only after she'd received the amended assessment notice. This panel finds that the original assessed value would, on the facts, be acceptable to the Complainant, and may therefore be taken to be the requested value. The information to support that value would be that the Complainant considered it fair and reasonable, given the fact that she had not filed a complaint concerning it.

Issue 4:

Neither the Assessor nor the Complainant brought this issue up. Homeowners who find themselves facing an extraordinary property tax burden because the zoning of their property has changed is nothing new. When similar situations arose in the past, assessors and assessment review boards sometimes relied on s.289(2)(a) of the *Act* to relieve against the harshness of assessments based on "highest and best use." They interpreted the requirement in s.289(2) that assessments must reflect the "characteristics and physical condition of the property" on December 31st of the assessment year, as meaning that the property should be assessed based on its existing use on December 31st, not its potential use. That interpretation appears to have been enshrined in Section 11 of *MRAT,* which provides as follows:

> ***When permitted use differs from actual use***
>
> *"(3) When a property is used for farming operations or residential purposes and an action is taken under Part 17 of the Act that has the effect of permitting or prescribing for that property some other use, the assessor must determine its value*
>
> > *(a) in accordance with its residential use, for that part of the property that is occupied by the owner or the purchaser . . . and is used exclusively for residential purposes . . ."*

Clearly, the purpose and intent of s.11 is the protection of homeowners from sudden and extraordinary increases in their assessments. According to the amended assessment

notice, the use of the subject property is "residential". No other use is mentioned in the notice, and there is no evidence of occupation of the property by persons other than the owner, which supports a finding that the entirety of the subject property is used solely for residential purposes. An action under Part 17 of the *Act* means something done pursuant to the planning provisions of the *Act*, and in particular, includes the re-zoning of land.

In the present case, the Complainant consented to the re-zoning because she wanted to have her residence connected to the City's water supply, and re-zoning to multi-residential use was a pre-condition of that. The assessor informed the panel that a lawyer had gone around getting consents for the re-zoning from land owners on behalf of the developer who had applied for the re-zoning. Whether the Complainant's consent was an informed consent is not known. Nevertheless, in the view of this panel, the fact the Complainant consented to the re-zoning does not negate the application of s.11 of *MRAT* to this case.

Had the legislature intended to limit the application of s.11 to involuntary re-zonings, which very rarely occur in the City of Calgary, they could easily have done so. With respect to what is meant by "permitting or prescribing for that property *some other use*" (panel's italics) in s.11, it is the the view of this panel that "some other use" would include a more intensive residential use. If, as the panel has found, the intent of s.11 is to mitigate the harshness of assessments based on highest and best use, why limit it to non-residential re-zonings? After all, most re-zonings of residential land are for another, more intensive residential use. Furthermore, the panel notes that in the City of Calgary's Land Use Bylaw, single-family residential use is a distinct land use in and of itself, as are more intensive residential uses, which would therefore fall into the category of "some other use" in s.11. It is the finding of this panel that s.11 of *MRAT* applies in this case.

Issue 5

For the reasons given above, it is the finding of this panel that the amount of the original assessment, $617,000, would be a fair and reasonable assessment for the subject property.

Decision of the Panel with respect to the Assessment

Accordingly, the assessment of the subject property is reduced to $617,000, the amount of the original assessment, which was based on single-family residential use, and in the circumstances, is fair and reasonable.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF November 2010.

T. Helgeson
Presiding Officer

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.*