

**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:**

***JOAN M FLEMMER (as represented by RANDY FLEMMER), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***Board Chair P. COLGATE  
Board Member R. DESCHAINED  
Board Member S. ROURKE***

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: 094501202**

**LOCATION ADDRESS: 211 4999 43 STREET SE**

**HEARING NUMBER: 60700**

**ASSESSMENT: \$106,500**

This complaint was heard on 26th day of July 2011 at the office of the Assessment Review Board located at Floor Number 4th, 1212 – 31 Avenue NE, Calgary, Alberta, and Boardroom 2.

Appeared on behalf of the Complainant:

- *Randy Flemmer – Representing Joan M Flemmer*

Appeared on behalf of the Respondent:

- *R. Todd Luchak – Representing the City of Calgary*

**Board's Decision in Respect of 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 as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

**Property Description:**

The subject property is a 461 square foot industrial condominium office located on the second floor of 4999 43 Street SE, Calgary.  
The subject is located Unit 48 of condominium plan 0011437.

**Issues:**

1. Inequity in comparison to similar spaces in the complex
2. Failure to recognize unique function obsolescence for the subject property

The market value assessment is high in relation to similar units and does not take into consideration the unique character of the subject.

**Complainant's Requested Value:** \$65,835, revised in disclosure to \$67,790

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

Complainant's Evidence:

The complainant raised a number of concerns with respect to the assessment for the Board to consider –

1. The Property was appealed in 2010 and the assessment was reduced from \$158,000 to \$85,000
2. The property is not a separate unit but is only an office located within another unit - #215
3. The change in property taxes year-over-year for #215 versus #211
4. Unit does not have a separate entrance, but access to the subject is through unit #215
5. Unit does not have separate facilities – bathroom, kitchen, storage. It is not a standalone unit
6. Unit #211 cannot be sold alone – separate from #215

The complainant provided photographic evidence as to the location of the subject within #215

and access to the subject unit is only through #215.

The complainant provided 3 comparables within the complex with lower assessments to support a reduction in the assessment on the subject, specifically units #263, #243, #227 which have lower assessments at \$65,000.

#### Respondent' Evidence

The contention the subject unit could not be sold separately is not one the Board is prepared to address, for this can only be proven in the market place when the unit is offered for sale.

The Respondent provided an historical chart to show how the assessment had changed between 2010 and 2011. The charts showed the assessment for the subject had been reduced by the Composite Assessment Review Board (CARB) in 2010 from \$158,000 to \$85,000. This chart was supported by the inclusion of the CARB decision 1549/2010-P.

An equity comparable chart was provided with 4 comparables from within the same complex as the subject. Comparable one is the same size as the subject and has the same assessed value of \$106,500. The remaining three comparables are larger units assessed at a lower rate per square foot. Through testimony this was explained as a result of diminishing return, when sale price per square foot decreases as size increases.

The Respondent provided portions of the plans for the complex to add in the understanding of the location of the subject and the comparables. Also one photograph of a Complainant's comparable was provided. The Respondent testified the comparables provided by the Complainant were not the same. Whereas the subject is assessed as a second floor unit in the complex, the comparables are classified as mezzanine offices which have a different rate per square foot.

In the Respondent's submission was a copy of the Transfer Document for Units 47 and 48 in Condominium Plan 0011437. Testimony from both parties, Complainant and Respondent, indicates this transfer is for the units identified as #215 and #211.

The Respondent has provided the Board with two decisions from the Assessment Review Board for 2011 which address the question of year-over-year changes to the assessment – ARB 0403/2011-P and ARB 0142/2011-P.

#### **Findings of the Board:**

##### Complainants Submission:

The decision of prior year Assessment Review Boards has no bearing in the current year complaint. Each year is a new assessment and decisions must be based upon the evidence submitted for the current year. Prior decisions may provide some guidance to the Board, but do not replace the requirement for evidence to be submitted which is specific to the current assessment. It is this evidence on which the Board will make a decision.

The Board finds there is no argument with respect to the City of Calgary identifying the subject as a separate parcel for assessment purposes and applying an assessment to the subject. The space under complaint is identified as Unit 48 of Condominium Plan 0011437.

The question raised specifically regarding taxes is one the Board is not allowed by legislation to address as it falls outside the jurisdiction of the Board.

The testimony with respect to the access to the unit and the lack of facilities was not challenged by the City of Calgary.

Respondent's Submission:

The Board finds the Respondent has assessed all units in a similar manner with rates per square foot adjusted depending upon size of the individual units.

The Respondent through diagrams and photos has explained to the satisfaction of the Board the reason for the lower assessments on the comparables provided by the Complainant. The comparables are in an unfinished condition and are designated as mezzanine space as opposed to second floor space designation for the subject.

The transfer document provided information on the sale by establishing a sale price per square foot of \$246.57, based upon a disclosed sale price of \$287,500. The Board does take note this is for two condominium units - Units 47 and 48 of Condominium Plan 0011437.

**Board's Decision:**

The Board, after hearing testimony of the Complainant and the Respondent

1. The subject , #211, is dependent upon access through unit #215

The decision of the Board is to recognize the combined nature of units #211 and #215 in as much as #211 is currently dependent upon access through #215.

The Board in their decision looked at the situation in total for the two units - #211 and #215 –

1. the two units were purchased by the owner together, as evident in the Transfer Document provided by the respondent;
2. the price paid per square foot, \$246.57, supports the rate of \$231 applied by the City of Calgary;
3. the condominium plan clearly shows space has been set aside as common property which would allow the separation of condominium units 47 and 48 into two separate entities with the construction of a demising wall. The owners choose not to separate these two units but to use as one contiguous space is a management decision, but does not negate the legal description that two separate condominium spaces are in place;
4. from testimonial evidence and the condominium plan the Board accepts that access to Unit 48 may require access through Unit 47, but does not feel that this would have a significant impact upon the use of Unit 48 or an ability to place Unit 48 in the market place;
5. no evidence was submitted as to cost of construction to separate the two condominium units into separate office spaces.

The Respondent's evidence shows the subject has been assessed in a like manner as similar condominium units in the complex.

The Board finds there is insufficient evidence provided to justify a change to the assessment of the property under complaint.

The Decision of the Board is to confirm the assessment to \$106,500.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF August 2011.



Philip Colgate  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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.*