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:

ENVIRONMENTALLY YOURS INC, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Glenn, PRESIDING OFFICER
D.Morice, MEMBER
J. Mathias, 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:	**068105907**
LOCATION ADDRESS:	**105 8 AVE SW**
HEARING NUMBER:	**62192**
ASSESSMENT:	**$3,520,000**

This complaint was heard on the 28th day of September, 2011 at the office of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 10.

Appeared on behalf of the Complainant: Marga Betz (Principal of Complainant)

Appeared on behalf of the Respondent: Emilia Borisenko (Assessor)

Board's Decision in Respect of Procedural or Jurisdictional Matters:

No issues of procedure or jurisdiction were raised.

Property Description:

The subject property is actually 2 immediately adjacent buildings dating from 1898, located in the old sandstone section (Stephen Avenue Mall area) of downtown Calgary. The buildings have been integrated inside, though there is still a party wall. The easterly building is three storeys, the westerly building is two storeys but only for 25 feet back from the front facade, with the balance being single storey. The footprint of the property is: 50' by 130'. The buildings have always been mixed (that is, both residential and commercial) use.

The commercial component consists of three retail bays on the ground floor. The upper floors contain 14 small residential units generating modest rent. The 2011 property assessment is $3,520,000, based on 23% residential and 77% commercial (non-residential) use.

Issues:

Whether the subject property is properly assessed, in light of the following:

1. The split between residential and commercial use, as assessed.
2. The excess of market value based on actual commercial and residential rent.
3. Insufficient consideration of characteristics and physical condition regarding damage and loss of income due to adjacent construction.
4. Equity of subject assessment when compared to other Stephen Avenue Mall properties.

Complainant's Requested Value:

$2,750,000

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

The Complainant argues the subject properties are heritage buildings, even though they are not officially designated as such. The subject is located in a National Historic District. That, coupled with the original manner of construction means the subject cannot be developed more or enlarged in spite of the fact that it is zoned CN2.

The Complainants also state the subject property has, since 2008 been seriously damaged by construction taking place on adjacent buildings. Further, they state that current income from their residential tenants is lower because of "noise, vibration, and general damages" caused to the buildings. They say income from the retail space has also diminished since 2008 because one retailer has moved out and another has asked for a rent reduction due to the impact of the nearby construction.

The Complainants also claim the proportion of residential to commercial space does not accurately reflect the use that has existed since 1898. As a ratio of the overall area occupied (in terms of square footage), the property is approximately 1/3 non-residential use (main floor retail) and 2/3 residential (upper two floors). The Respondents rely on a split of approximately 77% non-residential, and 23% residential for the subject assessment, based upon the percentage of value which each category contributes to the overall assessment. The actual calculation of this split was not shown in evidence.

As the split between the residential and non-residential portion was an issue before the Board, the breakdown calculation was checked, using the assessed valuation input parameters. In fact, the assessed split was found to be erroneous:

Assessment Class	**Assessed Value** (as calculated)	**Actual Split**	**Assessed Split**
Residential	$1,406,674	39.88%	23.00%
Non-Residential	$2,120,482	60.12%	77.00%
Total	$3,527,156	100.00%	100.00%

The current assessed split is incorrectly weighted in favour of the non-residential class, to the Complainant's detriment, due to the higher applied mil rate (tax rate).

The Respondent conducted a field inspection of the subject, whereby detailed measurements were taken. A plan and summary were provided in the Respondent's evidence package (Exhibit R1, page 20). It was apparent that the Net Rentable Area (NRA) was over-stated in the initial assessment. The total NRA was found to be 13,061 square feet (SF), compared with the assessed 14,694 SF. It was also noted that the Residential portion was less (7,754 SF vs. 9,750 SF), but the Non-Residential portion was higher (5,307 SF vs. 4,944 SF).

A revised assessment calculation was included in Exhibit R1, page 21. Based on the correct areas, the assessment should be $3,394,000. The Assessor stated that this change would be applied for the following year's assessment. The Board, however, sees no reason to maintain the initial assessment that was shown to be factually incorrect. As the split was not shown, the Board applied the valuation inputs to obtain the following calculation:

Assessment Class	**Revised Assessment Exhibit R1, Pg 21** (as calculated)	**Revised Split**
Residential	$1,118,703	32.95%
Non-Residential	$2,276,172	67.05%
Total	$3,394,875 *	100.00%

* Total assessment truncated by the Respondent to $3,394,000

The Complainant argues adjacent properties have assessments which are hard to compare, and that there are no comparable properties.

The Complainant claims the majority of the damage due to construction was caused in 2010 when the tiebacks were removed from the construction of the Le Germain development (located immediately to the south of the subject). Photos documenting the resulting damage are included in their brief. The Complainant acknowledged that there were no pictures from before the construction damage introduced in their evidence.

So far, apparently $180,000 has been spent on the repairs that the adjacent construction has precipitated, and there is still substantial construction damage to the subject yet to be repaired. The Complainant suggests that the damage precipitated by the construction exceeds $300,000, but there is no documentation in evidence to substantiate this figure. They say there is insurance for this, but so far no monies have been received from the insurers for any of the alleged construction damage.

The Basement area is a problem, in that the ceiling is low, and there is no concrete floor in the basement, only a dirt floor with boards on top. It cannot be rented out.

The Respondent counters that the basement area of the subject is not assessed. They further state that they rely on an income approach to valuation, and their brief provides a calculation showing a rental rate of $12/SF for residential space, and a rate of $33/SF for retail space, along with an appropriate vacancy rate of 8% for residential space, and 5% for retail space, as well as a cap rate of 7%. These numbers support the Respondent's position on the subject assessment.

In addition, the Respondent presents a number of Lease Equity comparables, as well as a number of sales comparables, all of which support their position. The Respondent also provides a number of photos showing that the neighbouring properties appeared very similar to the subject. These photos support their position on comparables.

The Complainant states in rebuttal that the subject is unique and complicated. They go on to state that one of their retail leases is rent-controlled, and is confidential to " our tenants and us", so, they could not do a proper lease comparison.

The Respondent summarizes by saying that all of the subject property's neighbours are comparable and should have been provided as part of the Complainant's presentation. Further, they suggest that the construction damage to the subject will most likely be paid by the insurance which is in place. They state that the subject property is in a prime location, and it has been assessed the same as other properties on the Stephan Avenue Mall.

All told, after a complete review of all the evidence called by both parties, the Board is not convinced that the revised subject assessment (as calculated in Exhibit R1, pg 21) is unfair, or incorrect. Notably, there was no market evidence from the Complainant to support a lower rate.

Accordingly, the subject assessment is reduced to the amount of $3,394,000 with a revised split of 33.0% residential and 67.0% Non-Residential.

DATED AT THE CITY OF CALGARY THIS 24th DAY OF NOVEMBER, 2011.

R. Glenn
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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. 2421-2011-P	*Roll No.068195907*			
Subject	*Type*	*Issue*	*Detail*	*Issue*
CARB	Retail and Residential	Low Rise	Income Approach	Net Market Value