

**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:

***Telus Communications Inc. (as represented by Colliers International Realty Advisors),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, M. Peters
Board Member 2, J. Massey***

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: 068076009

LOCATION ADDRESS: 114 – 7 Avenue S.W.

HEARING NUMBER: 64500

ASSESSMENT: 3,890,000.00

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

Appeared on behalf of the Complainant:

- *S. Miekcljohn*

Appeared on behalf of the Respondent:

- *H. Neumann*

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

There were no procedural or jurisdictional matters to be dealt with.

Property Description:

The subject consists of a marginal retail mixed use property. The building is 8,633 s.f., built in 1973. The site area is 13,017 s.f.

Issues:

The current assessment is based on land value only, and is based on a base rate of \$375.00 per s.f., with a minus 15 per cent influence for frontage on Light Rail Transit, and an exempt account of \$257,000.00. The complainant contends that the assessment ought to be \$200.00 per s.f. less Light Rail Transit adjustment, and exempt property, resulting in a net assessment of \$150.03 per s.f.

There are no other issues.

Complainant's Requested Value: \$1,953,000.00

Evidence

The Board notes that the assessment has decreased from \$4,160,000 in 2010 to the current level in 2011.

The Complainant submitted a table of 22 property transactions, dating back to January, 2005, and up to June, 2009. The overall mean and median was \$289.37 and \$242.57 per s.f. There is no discernible pattern to the prices paid. It is the Complainant's contention that the longer the holding period to development, the lower the land value should be. In support, the Complainant referred to the three transactions by Encana Corporation which constituted the assembly for the development of the "Bow" office complex. The three reflected per s.f. prices of \$243.34, \$830.77 and \$568.98, from the earliest to the most recent. However, even the most recent occurred in May, 2007. In addition, there was some question raised as to whether the second acquisition, at \$830.77 was in fact the acquisition of the Regis Hotel property, which Encana apparently acquired to house transient workers on the Bow project.

In addition to the Bow assembly, the Complainant placed considerable reliance on the June, 2009 sale of a laneway from the City of Calgary to Imperial Oil Resources Limited. The selling

price was \$200.02 per s.f. Imperial Oil owns virtually all of the property to both sides of the closed lane. The Respondent argues that the land is undevelopable on its own merits, and that the land has no value to anyone other than Imperial Oil. The Complainant takes the position that 'anyone' would buy the lane, knowing that Imperial Oil would eventually have to acquire the site to accommodate development.

The Respondent firstly submitted that the Complainant has not met the burden of proof. The Respondent then submitted four sales of property that the Respondent considered land value only. The mean and median selling price was \$589.82 and \$566.73 per s.f. Whether or not the selling prices represented land value only was called into question by the Complainant, but no evidence to the contrary was presented.

The Respondent also presented a Vacant Land Map and Table outlining the vacant land base rates in the different zones of the downtown core. All of the land in DT1, and DT8 is assessed at \$375 per s.f. before influence adjustments.

Finally, the Respondent presented a table of the Complainant's comparables, using only the 2007 and more recent transactions. The average selling price appeared at \$385.81 per s.f., essentially equal to the City's DT1 base land rate.

Board's Decision

The concept of "standard of proof" refers to how convinced one must be that a certain fact exists.

The onus of proving that an assessment is incorrect lies with the individual alleging it. The onus rests with the Complainant to provide convincing evidence to justify a change in the assessment.

In *Manyluk v. Calgary (City)*, MGB Board Order 036/03, it states;

"Every opportunity is provided to both parties to present evidence and arguments in support of their positions. The ultimate burden of proof or onus rests on the appellant, at an assessment appeal, to convince the MGB their arguments, facts and evidence are more credible than that of the Respondent."

In *Kneehill (County) v. Alberta (Municipal Affairs, Linear Assessor)* (2004) Board Order MGB 001/04

"It is up to the parties who file a complaint on an assessment to put sufficient energy into proving that their allegations are well founded. In other words, the onus is upon the complaining party to provide sufficient evidence in order to prove their case."

Finally, in *Shirley-Anne Ruben et al v. City of Calgary* MGB 239/00 at page 15

"Furthermore, just as the onus is on the Appellants to provide prima facie proof that any particular assessment may be incorrect or inequitable, the Appellants have the initial burden of proving that the Respondent erred in the methodology adopted or implemented in connection with the assessments."

In the opinion of this Board, the Complainant did not meet the onus required to convince the Board that a change in the assessment is required or justified.

None of the Complainant's arguments were compelling enough to prompt this Board to alter the assessment. The assessment is confirmed at \$3,890,000.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF October, 2011.


Jerry Zezulka
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

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1. C1 Complainant Submission of Evidence,
 2. R1 City of Calgary Assessment Brief

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.*
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Decision No. 2335/2011 - P			Roll No. 068076009	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	6 other	Vacant land	Land value	comparables