

## **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:**

***Qualex-Landmark Union Inc. (as represented by MNP LLP) COMPLAINANT***

**and**

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

**before:**

***T. Helgeson, PRESIDING OFFICER***

***J. Kerrison, BOARD MEMBER***

***Y. Nesry, BOARD 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 2013 Assessment Roll as follows:

**ROLL NUMBER: 068133503**

**LOCATION ADDRESS: 301 11 Avenue SW**

**FILE NUMBER: 70760**

**ASSESSMENT: \$18,660,000**

This complaint was heard on the 9<sup>th</sup> day of July, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *G. Worsley, W. Van Bruggen*

Appeared on behalf of the Respondent:

- *R. Ford*

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

No procedural or jurisdictional matters were raised before the Board during the hearing.

**Property Description:**

[1] The building on the subject property was constructed in 1976. The floor area of the building is 101,677 square feet ("sq. ft."), 46,347 sq. ft. of which is below grade. The remaining area is regular office space. The building has been classified by the Respondent as a "B" building. The land area of the subject property is 55,939 sq. ft.

**Issue:**

[2] Is the sale of the subject property a reliable indication of market value?

**Complainant's Requested Value:** \$17,000,000

**Board's Decision:** \$17,000,000

**Positions of the Parties**

**Complainant's Position**

[3] The assessment amount on the notice of assessment is not reflective of the range of key factors and variables. Key factors and variables include location, parcel size, improvement size, land use, and influences. The assessment amount is neither fair nor equitable relative to similar properties in the jurisdiction.

[4] The assessment is clearly incorrect because the subject sold for \$17,000,000 on October 24, 2012, as a development project (C-1, page 8). The owner tried to lease the subject property, but without success. There are a number of Alberta Queen's Bench decisions and ARB decisions that support the use of sale values.

[5] The rental rate for the subject property should be no more than \$13 per sq. ft., and the capitalization rate 6.25% (C-1, page 8, *not numbered*). The assessment does not properly adjust for vacancy, and the resulting loss of recoverable expenses. The vacancy rate should be at least 11%. Further, the municipality failed to recognize the tax exempt status of one or more tenants, pursuant to Sections 362 and 364 of the *Act*.

[6] Nevertheless, MNP is asking the Board to adjust the assessed value to the sale value, i.e., \$17,000,000, which trounces MNP's other valuation requests, i.e., \$14,420,000, \$15,170,000 (C-1, page 8, *not numbered*), and \$15,861,000 (C-1, page 7, *not numbered*).

#### **Respondent's Position:**

[7] the Complainant is requesting an office vacancy rate of 11%, based only on vacancy study of Beltline B class office properties. In the alternative, the Complainant requests a 15% vacancy rate on grounds that the subject property is atypical.

[8] The Respondent has combined all Beltline office classes together, and done an analysis to determine the the overall typical office vacancy of 8%. After reviewing the Complainant's B class office study and making some necessary changes, the study came in under the typical vacancy rate of 8% (R-1, page 5).

[9] With respect to the 6.25% capitalization rate the Complainant requests, the Complainant's study excluded two sales relied on by the Respondent and added in two other sales to achieve their result (R-1, page 6). Further, the Complainant's ASR study is done incorrectly. The Respondent will demonstrate that the subject property was assessed fairly and equitably with other B Class office building in the market area.

#### **Board's Reasons for Decision:**

[10] As defined in Section 1(n) of the *Municipal Government Act*, "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*". The subject property sold on October 24, 2012, only three months and 24 days subsequent to the valuation date. The Board acknowledges that the sale is *ex post facto*, but nevertheless the Board is of the view that there is no need for a time adjustment over such a short period of time.

[11] The Respondent does not appear to have a problem with the sale. In fact, the sale is of the kind the Respondent relies on to assess other improved properties in the Beltline, in that the purpose behind the sale is development, or more accurately, redevelopment. Since both parties recognize the legitimacy of the sale, the Board finds no reason to ignore it. Further, the Court of Queen's Bench of Alberta has in certain cases accepted sales of assessed properties as best evidence of market value.

[12] In *Mountain View (County) v. Alberta (Municipal Government Board) and Keiver*, 2000 ABQB 2000 ABQB 594, Justice Fraser had this to say about sales in the market:


*"[29] To summarize, I am of the view that the Board was entitled in law to reduce the land assessment under review to market value as it did, notwithstanding the resulting value was not determined by the use of mass appraisal and notwithstanding that the revised assessment may not have been fair and equitable at the time having regard to other assessments in the County. The application of the County to have Board order MGB 172/99 quashed is therefore dismissed."*

[13] With respect to equity, in *Mountain View County v. Alberta (Municipal Government Board)* (2000) A. J. No.1042, the Court had this to say about concerns involving the three principles, i.e., equity, market value, and mass appraisal:

*"The requirements imposed by these three principles may be in conflict. If they are, the conflict should be resolved. In my opinion this should be done on the basis that if an assessment is higher than market value it should be reduced. If the result of the reduction is that the assessments are lower than those of other properties, the latter should on revision of the rolls in future years be corrected by reduction to a level equitable with the assessment of other properties. The answer should not be to maintain (in conflict with the Regulation) the assessment at a level higher than market value."*

[14] The Board finds that the sale value of the subject property is the best indicator of its market value.

DATED AT THE CITY OF CALGARY THIS 11<sup>th</sup> DAY OF October 2013.

  
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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. C2	Complainant Disclosure
3. R1	Respondent Disclosure

**For Administrative Use**

<b><u>Subject</u></b>	<b><u>Property Type</u></b>	<b><u>Property Sub-Type</u></b>	<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>
<b>CARB</b>	<b>Office</b>	<b>Stand Alone</b>	<b>Sales Approach</b>	<b>Equity Comps</b>

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*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.*