

**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:

Niko Building Corp. as represented by Assessment Advisory Group Inc.) COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, H. Ang
Board Member 2, D. Julien***

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: 201078318

LOCATION ADDRESS: 2149 – 23 Street NE

HEARING NUMBER: 64750

ASSESSMENT: 871,500.00

This complaint was heard on 30 day of August 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:

- *T. Howell*

Appeared on behalf of the Respondent:

- *P. Sembrat*

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 single 4,080 s.f. commercial building on a 0.85 acre site, in the South Airways community of NE Calgary. The building was constructed in 1987, and is currently occupied by an auto body shop.

Issues:

The property is assessed using the income approach. The typical rent applied is \$18.00 per s.f. The assessment calculates to \$213.60 per s.f. of building area.

A number of issues are identified on the Complaint form. The only item that the Complainant chose to address is the question of equity, based on typical rents.

There are no other issues.

Complainant's Requested Value:

\$775,000 on the complaint form, amended to \$721,500 on the evidence submission. The requested assessment calculates to \$176.83 per s.f.

Evidence

The Complainant submitted one equity comparable, stating that the comparable is an A2 quality building, while the subject is a B- quality building. The comparable assessment calculates to \$248.27 per s.f. The rent applied in the assessment of the comparable is the same as the rent applied to the subject. It is the Complainant's position that the similarity is inequitable, in that the comparable should have a higher typical rent rate applied for assessment purposes. The comparable is the Sunridge Mazda auto dealership premises.

In support of the income capitalization result, the Respondent presented 16 equity comparables showing the \$18.00 per s.f. assessed rental rates for premises similar to the subject. The Respondent also submitted 14 lease comparables in support of the assessed rate applied. The average and median rates reflected by the comparable data sampling are \$18.25 and \$17.48

per s.f.

It is the position of the Respondent that the Complainant did not meet the burden of proof.

Board's Decision

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 fascia 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."

It is the opinion of this Board that the single comparable submitted by the Complainant is not comparable by reason of the respective uses of the two properties. Moreover, a single comparable simply does not constitute convincing evidence. 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.

The assessment is confirmed.

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



Jerry Zezulka
Presiding Officer

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

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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<i>Decision No. 2039/2011 - P</i>			<i>Roll No. 201078318</i>	
<u><i>Subject</i></u>	<u><i>Type</i></u>	<u><i>Issue</i></u>	<u><i>Detail</i></u>	<u><i>Issue</i></u>
CARB 2053	Retail	Stand alone	Income Approach	Rental rate; equity