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## CASE SUMMARY: AN APPEAL OF A DECISION FROM THE PROPERTY ASSESSMENT APPEAL BOARD WAS DISMISSED AS ITS FINDINGS REGARDING THE “HIGHEST AND BEST USE” OF THE PROPERTY WERE REASONABLE

**Administrative law – Decisions reviewed – Assessment Appeal Board – Municipalities – Property Assessment – Judicial review – Appeals – Standard of review – Reasonableness**

*Telus Communications (BC) Inc. v. British Columbia (Assessor of Area #09 – Vancouver Sea to Sky Region)*, [2018] B.C.J. No. 119, 2018 BCSC 113, Supreme Court of British Columbia, January 26, 2018, Iyer J.

The Property Assessment Appeal Board (the “Board”) established the actual or market value of a Telus-owned property in Vancouver. Telus used the property to provide hardwired local telephone service and access to long-distance services (the “Services”). The Board considered the language of section 19 of the *Assessment Act*, RSBC 1996, c. 20 (the “Act”) and held that the value of the property for assessment purposes was based on its highest and best use, which was for redevelopment. The Board rejected Telus’ claim that the property’s highest and best use was for its existing use as a telecommunications exchange.

Telus sought a review of the decision. Telus argued that the Board erred by failing to consider the regulatory requirements imposed on Telus by the Canadian Radio-Television and Telecommunications Commission (CRTC) which mandates it to continue to provide the Services. Telus argued that its legal obligation to provide the Services means that the costs it would incur to relocate provision of the Services to another property in order to realize the value of the property for redevelopment must be included in determining the actual value of the property. Since the cost of relocation would exceed the amount for which the property could be sold for redevelopment, Telus argued that the value that should be used for appraisal purposes should be based on its existing use as a telecommunications exchange.

The Board differentiated between obligations that run with the land and those that run with an owner of land. The Board had determined that any “obligation to serve” imposed by the CRTC on Telus as a condition of its participation in the telecommunications industry relates to Telus and the business it is in, not to the property itself. Accordingly, they said that Telus’ “obligation to serve” did not affect the determination of the value of the Property for the purposes of the Act.

Telus argued that the Board acted unreasonably by not deducting its relocation costs. Telus argued that it could not sell the property without incurring costs to relocate. The Court considered that Telus was required to establish that the property could not be sold without incurring these costs. As the Board’s determination of the highest and best use of a given property is a question of fact, the Court confirmed that the decision is not reviewable unless there is no evidence at all to support it.

The Court considered the concept of “value to owner”, which includes the degree to which an owner will incur extra costs in order to keep the property in the face of a market value that would convince another rational owner to sell. Telus argued that the “value to owner” of relocation costs were not specific to Telus, as all subsequent owners would incur the same expense. However, there was evidence before the Board that Telus had received an unsolicited offer from a developer to purchase the property as vacant, meaning that the relocation costs would not necessarily be incurred by all prospective owners. Therefore, the Court concluded that there was evidence before the Board that the market of potential buyers included entities other than ILECs, and therefore the Board’s determination that relocation costs were a value to owner was reasonable. The Court upheld the Board’s decision and dismissed the appeal.

This case was digested by [JoAnne G. Barnum](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact JoAnne G. Barnum at [jbarnum@harpergrey.com](mailto:jbarnum@harpergrey.com).