

## **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:**

**612133 Alberta Ltd. (as represented by MNP LLP), COMPLAINANT**

**and**

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

**before:**

***M. Axworthy, PRESIDING OFFICER***

***P. Pask, BOARD MEMBER***

***I. Fraser, 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: 141121111**

**LOCATION ADDRESS: 12725 Lake Fraser DR SE**

**FILE NUMBER: 70426**

**ASSESSMENT: \$1,650,000**

This complaint was heard on 12th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *J. Langelaar (MNP LLP)*

Appeared on behalf of the Respondent:

- *C. Yee (City of Calgary)*
- *I. Pau (City of Calgary)*

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

[1] No procedural or jurisdictional matters were raised.

**Property Description:**

[2] The subject property is a 43,107 square foot (sq. ft.) parcel of land designated Direct Control (DC) Bylaw 134Z90 and located in the community of Lake Bonavista. The site is used for additional car storage for the adjacent automobile dealership. The subject assessment equates to \$38.28 per sq.ft.

**Issues:**

[3] What is the correct market assessment for the subject property?

[4] Other matters and issues were raised in the complaint form filed with the Assessment Review Board (ARB), on March 1, 2013; however, the only issue that the parties sought to have the Board address at the July 12, 2013 hearing is the one referenced above.

**Complainant's Requested Value:** The requested value on the complaint form is **\$500,000**. and amended at the hearing to **\$520,000** [p 9, C-2].

**Board's Decision:**

[5] The Board considers the requested adjustment of -25% to the assessed value to recognize a Land Use Restriction to be reasonable and reduces the assessment to **\$1,237,500** [\$1,650,000- (\$1,650,000-.0.25= \$412,500)].

**Position of the Parties**

**Complainant's Position:**

[6] The Complaint stated that the subject property is over assessed when compared with comparable land sales in south-east Calgary that have similar land use designations. The following comparable sales were provided in support of the Complainant's requested assessment:

Index	Address	Date sold	Sale Price	Lot size (sq. ft.)	Price /sq. ft.	Zoning
C1	101 Copperpond BV SE	11-Jan-11	\$779,190	40,958	\$19.02	CN-2
C2	267 Walden GA SE	1-Apr- 11	\$1,300,000	69,696	\$18.65	C-Com2
C3	267 Walden GA SE	17-Jul-12	\$888,600	29,795	\$29.82	C-Com2
C4	3750 Market ST SE	28-Sept-12	\$2,100,000	91,476	\$22.96	DC

- [7] The Complainant withdrew the reference to the Associated Parcel adjustment outlined on p. 10, C-1.
- [8] The Complainant highlighted that 267 Walden GA SE (index C3 and C4) was represented twice in the table as the parcel had been subdivided and a smaller parcel, similar in size to the subject, sold 12 days after the evaluation period.
- [9] The Complainant noted that the comparables show a median rate of \$20.99 per sq.ft [p 9, C-1] which is significantly lower than the assessed rate.
- [10] The Complainant noted that The City did not include C-Com2 sales in its analysis and therefore a full picture of market values is not presented. The Complainant did acknowledge that the effects of the C-N2 and C-Com2 land use districts are the same.
- [11] The Complainant indicated that the subject property should receive a Land Use Restriction influence adjustment of 25% to account for the restriction on land use contained in DC Bylaw 134Z90 that does not apply to other properties nearby. Specifically, Section 2 (a) of the bylaw states as follows:

"2. Development Guidelines

Density

The net floor area for commercial development for Site 1 and Site # combined shall not exceed 32,515 M<sub>2</sub> (350,000 sq.ft.). At the time of application for a development permit, the proponent shall provide calculations showing the net floor area used to date and that still available for development."

- [12] The Complainant stated that the subject property is located on Site 1 of the bylaw. The development on Sites 1 and 3 of the bylaw comprises 376,283 sq. ft. [p10, C-2] so there is no development potential left on the subject site which is held under separate title.
- [13] The Complainant asserted that the subject site had a Limited Access restriction as DC Bylaw 134Z90 prohibits direct access from Site 1 to Macleod Trail and does not currently have direct access to Lake Fraser DR SE. The Complainant provided an example of a similar site in north east Calgary [pp 11 and 34-35, C-1] where the Limited Access influence adjustment had been applied.

[14] The Complainant asked that the assessment be further reduced by 5% as the subject site is not on a corner, as are the comparables.

[15] The Complainant argued that the sale of index R3 should be excluded as the Complainant could find no evidence that it had been listed for sale and exposed to the market and represented an "arm's-length" transaction between unrelated parties.

[16] The Complainant accepted The City's comparable sale of Index R6 and adjusted its requested assessed value to reflect this transaction.

[17] The Complainant objected to the inclusion of a "Comments" sheet [p. 37, R-1] in The City's evidence package as the reference had not been included in its entirety.

**Respondent's Position:**

[18] In support of its position, the Respondent provided the following market sales for C-N zoned properties. Appropriate influence factors were applied to applicable properties. [p.21, R-1].

[19] The Respondent indicated that the sales price of 2009 and 2010 properties (index R1 and R2) had been time adjusted and that The City would direct its comments to properties indexed R3-R7.

Index	Address	Date sold	Sale Price	Lot size	Time Adjusted Sale (TAS) Price	TAS Price /sq.ft.	Zoning
R1	60 Bowridge Dr NW	02-Oct-09	\$1,5550,000	116,000	\$1,530,780	\$13.20	C-N2
R2	1800 194 AV NE	26-Mar-10	\$1,660,000	289,674	\$1,774,872	\$6.13	C-N2
R3	15229 Bannister RD SE	08-Jul-11	\$572,500	10,125	\$572,500	\$56.54	C-N1
R4	3624 Centre ST NE	16-Nov-11	\$640,000	10,193	\$640,000	\$62.79	C-N2
R5	500 Royal Oak DR NW	12-Dec-11	\$2,200,000	89,124	\$2,200,000	\$24.68	C-N2
R6	13 Southland CR SW	15-Dec-11	\$1,000,000	22,216	\$1,000,000	\$45.01	C-N2
R7	4024 16 ST SW	20-Dec-11	\$1,000,000	11,979	\$1,000,000	\$83.48	C-N2

[20] The Respondent stated that the most comparable sales were index and R3 and R6 [p.22, R-1] as they are closest in location to the subject and are in developed communities. The Respondent stated that there were significant differences in land value between developed communities and newly developing areas where large parcels are in the process of being subdivided for future commercial use e.g., Index C1, C2 and C4.

- [21] The Respondent noted that C-Com2 sales were not included in its analysis because it had not been able to find any such sales. They reiterated that they did not feel the sales used by the Complainant were good comparables as they are large parcels of land in developing communities.
- [22] The Respondent indicated that they had done a search on the property indexed R3 and found that it had been exposed to the market by the firm Avison Young and were confident that this sale represented an arm's-length transaction.
- [23] The Respondent did not include Index C4 as it is a large parcel in a newly developing community and is a *post facto* sale.
- [24] The Respondent stated that the subject property did not warrant a Land Use Restriction adjustment of -25%. They indicated that the Complainant had provided evidence that Sites 1 and 3 were already developed beyond the 350,000 sq. ft. allowed in DC Bylaw 134Z90, demonstrating that it was possible to develop more square footage than proscribed in the bylaw.
- [25] The Respondent also provided copies of amendments [pp 34-36 and pp 52-60, R-1] to DC bylaw 134Z90 to demonstrate that the provisions of bylaws can be changed by City Council. They specifically highlighted Section 2. (a) Density of Bylaw 52Z2004 [pp 34-36, R-1] that allows, under certain conditions, an increase beyond the 350,000 sq. ft for a portion of Site 3. A "Comments" sheet dated 2004-04-16 [p.37, R-1] was cited as further evidence on this matter. On questioning, the Respondent acknowledged that the restrictions on density set out in Bylaw 134Z90 still apply to the subject property.
- [26] The Respondent stated that a Limited Access restriction was not warranted in this case as the site had access to Lake Fraser DR SE and noted that this adjustment was only applied ".....to properties which cannot be easily accessed in such a way as to inhibit development". [p. 17, R-1] The Respondent provided an example on Bannister RD SE where such an adjustment had been correctly applied [p. 31, R-1].
- [27] The Respondent did not agree that an adjustment should be applied to the subject property because it was not a Corner Lot and noted that this was a positive adjustment added to a corner lot and not a negative one to be subtracted from a lot which was not located on a corner.

**Board's Reasons for Decision:**

- [28] The Board finds that in the absence of written evidence from the Respondent, sufficient doubt has been raised about whether the sale of Index R3 was "arm's- length" and it should be excluded. Index C1 should also be excluded because it is much larger than the subject and the pre-subdivision sale of index C2 should be excluded for the same reason.
- [29] The Board finds that the properties indexed R6 and C3 are the best indicators of value as they are similar in size to the subject, are located in the same general part of the city, share the same locational attributes and are agreed by both parties.
- [30] The Board agrees with the Complainant that a Land Use Restriction adjustment should be applied to the subject property as it is regulated by a DC Bylaw 134Z90 which has "....restricted development potential that similar properties are not affected by.", as per The City's Non-Residential Properties Influence Adjustments [p17, C-1] and finds the 25% requested reduction to the assessed value to be reasonable.

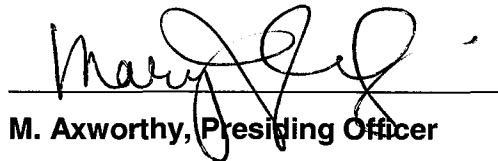
[31] The Board notes that as per Section 289 (2) of the MGA:

“Each assessment must consider the characteristics and physical condition of the property as of December 31 of the year prior to the year of which the tax is imposed under Part 10 in respect of the property.”

Therefore, future considerations of bylaw changes as argued by the Respondent are not considered relevant.

[32] The Board agrees with the Respondent that the Limited Access influence adjustment does not apply as the subject property has direct access to Lake Fraser Gate SE and that a 5% reduction because the subject parcel is not located on a corner should not be granted.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2013.

  
M. Axworthy, Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1 and C2	Complainant Disclosure
2. C3	Complainant Rebuttal
3. R1	Respondent Disclosure

*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.*