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:

1442345 Alberta Ltd. (as represented by Brenda MacFarland Property Tax Consulting), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER
K. B. Bickford, BOARD MEMBER
R. Cochrane, 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:	**201362571**
LOCATION ADDRESS:	**7000 11500 35 St SE**
FILE NUMBER:	**71568**
ASSESSMENT:	**$16,370,000**

This complaint was heard on the 24th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *B. MacFarland*
- *N. Laird*

Appeared on behalf of the Respondent:

- *M. Ryan*
- *S. Paulin*

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

[1] After the Complainant presented rebuttal, the Respondent raised an objection to the evidence included with respect to a parcel of land in the Northwest that had a limited/restricted access allowance, on the basis that it was new evidence and he could not present evidence in reply to it. He requested that the disputed evidence not be considered.

[2] The Board found it was clearly rebuttal evidence to refute the Respondent's claim that the allowance was only granted in cases of actual limitations to access such as no physical road. *AR 310/2009 Matters Relating to Assessment Complaints Regulation* states in Sec 8:

> Disclosure of evidence
>
> 8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:
>
> ...
>
> (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence ... that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Therefore the Respondent could have presented evidence at the hearing to challenge the Complainant's rebuttal evidence and the Board determined that it was admissible.

Property Description:

[3] The subject is a 71,290 sf automobile dealership constructed in 2011 on a 218,192 sf (5.01 ac) site at the northwest intersection of Deerfoot Trail and Barlow Trail SE. It is fully occupied by South Pointe Toyota. The site is accessed from 35 St SE via 114 Ave SE from Barlow Trail. It is assessed on the cost approach using data by Marshall & Swift (M&S) with 3% depreciation applied for the improvement, plus land at market value using the City-wide 2013 C-COR land rate of $122/sf for the first 3,000 sf, $65/sf for the next 17,000 sf and $10/sf for the remainder. The depreciated improvement cost is adjusted for GST resulting in an improvement value of $12,918,405 which added to the land value of $3,452,920 and truncated results in the assessment under complaint.

Issues:

[4] The Complaint form identified two issues, both of which were argued at the hearing:

1. The assessment for improvements is not market value and is inequitable.
2. The subject land value is too high and is inequitable.

Complainant's Requested Value:

$14,440,000 on the complaint form, adjusted to **$14,070,000 at the hearing**

Board's Decision:

[5] The assessment is reduced to $15,550,000

Position of the Parties

Issue 1 – Improvement assessment:

Complainant's Position:

[6] The subject improvement assessment is $181.24/sf and the M&S cost summary report indicates a Building Cost New (BCN) of $190.87/sf before depreciation and GST adjustment. The Complainant presented a spreadsheet of the BCN of eight other car dealerships built in 2004 to 2012 to show that this is far in excess of typical rates. The comparable dealerships ranged from $142.69/sf to $175.45/sf. The best comparable is #5, Charlesglen Toyota, which is also a Toyota dealership of similar size constructed in 2011. It has a BCN of $169.57/sf.

[7] In discussions with the Respondent, the Complainant was advised that the discrepancy in BCN between the subject and the comparable is due to the display tower, a glass-walled car elevator that is listed as six storeys of building with four levels of automobile showroom and one level of mechanical penthouse, each at 1,120 sf. The Complainant contends that this is not showroom space, it is a glass elevator shaft. It has no floors between its levels, which consist of steel tracks which the cars drive onto with only the wheels are supported, much like a vehicle hoist, which are then elevated. Access to the upper levels is via a metal staircase running between the car lifts and a safety harness is required. Customers are not allowed anywhere in the tower area, so it is clearly not showroom space. Its use is akin to storage space and it functions as a very large, expensive sign.

[8] Even if the calculation for the cost of the tower were correct, the Complainant argued that greater costs do not translate into increased market value. The Complainant presented *Montreal v. Sun Life Assurance Co. of Canada* [1952] 2 D.L.R. 81 1951 CLB 178 in which the Judicial Committee of the Privy Council upheld the decision of the Supreme Court of Canada in reducing the value of an office building because

> ...the building was built with unnecessarily expensive materials with an excess of decoration and without regard for its letting value. The ultimate object being to find the amount which a willing buyer and seller would agree upon, it by no means follows that the owner, even if regarded as a potential buyer, would pay the price originally expended or, to take another line of approach, that if he had to re-erect the building at the time of the assessment, he would erect one of the same form or incur the same expenditure.

[9] The Complainant noted that the subject and Comparable #5 are assessed at the same business assessment rate of $15/sf suggesting that the Respondent agrees that the two have

equal utility in terms of rental value. Thus the significantly different market values are not supportable. The Complainant requested that the BCN of the subject be reduced to that of the comparable at $169.57/sf or $161.01/sf with depreciation and GST adjustment for a requested improvement value of $11,478,456.

Respondent's Position:

[10] The Respondent presented photographs of the subject and marketing materials to suggest that the subject was correctly assessed. The Respondent conceded that there were no floors in the glass tower but it had glass walls and expensive lighting. The Respondent could not advise what the difference in the cost calculation would be if the tower had been assessed as one space that was six storeys high, or as a tower with adjustments for curtain wall cladding.

[11] Some of the differences in the Complainant's comparables would be due to the rank of the various components in the buildings, which are a measure of quality in which 1 is poor, 2 is average and 3 is good. The Respondent presented a spreadsheet showing the ranking of the components of the comparables and subject. The subject is ranked at 3 for the showroom and office, 2.5 for the service repair garage and 2 for the tower, while the comparables generally have lower ranks and include components such as car wash and storage not present in the subject.

Issue 2 – land assessment:

Complainant's Position:

[12] The subject land is zoned Commercial Corridor 3 (C-COR3) f1.62 h23. This land use district is described in City of Calgary Land Use Bylaw 1P2007 as, among other things, being characterized by locations along major roads. No market adjustments have been made for the land and it is assessed as typical C-COR land. This does not recognize several deficiencies that should be reflected in a lower land assessment. The Respondent has a list of influences for assessment of land, including influences such as -25% for "limited access" and "shape".

[13] The Complainant submits that the subject should have an adjustment for limited access, because in comparison to typical C-COR3 parcels, it has poor access to major roads. While it appears to be located on Deerfoot and Barlow Trails, it has no direct access to either road, only from 35 St SE via 114 Avenue SE. The Complainant presented a map of Macleod Trail showing that most C-COR3 sites have direct access to major roads and submitted that the subject site would not be as attractive for commercial development due to its convoluted access.

[14] The Complainant presented ARB1450/2010-P in which the assessment of a C-COR3 parcel in the Northeast was reduced due to not having direct access to a major road. Like the subject, it was I-2 under bylaw 2P80 and changed to C-COR3 when1P2007 came into effect. The Complainant was unclear as to when and why the land was rezoned to C-COR3, as the previous I-2 designation would have allowed an automobile dealership and the neighbouring sites are now zoned I-G. There was speculation that it might have been to accommodate the height of the tower.

[15] The subject parcel also has an unusual shape which would affect its market value. It is roughly L-shaped with only a small frontage onto 35 St and extending behind another parcel. The portion behind the other parcel is currently used for parking, but would not be suitable for more intensive development due to lack of exposure. The shape also creates difficulties in operations due to building placement and flow of traffic, and necessitates rental of other properties for additional space, which adds to operating costs.

[16] The Complainant requested the -25% adjustment be applied to the land rate and that it

should be reduced to $2,589,690 which, along with the requested reduction in the improvement and truncated, would result in the requested assessment of $14,070,000.

Respondent's Position:

[17] The Respondent stated that the site enjoys good exposure to the high traffic volumes on both Deerfoot and Barlow Trails, and that it would not be reasonable to expect direct access from those roads. Further, many major roads have medians that restrict the accessibility of sites that do have direct access. The limited access allowance is intended for sites that do have limited access, not just limited access to the major roads they front onto. The Respondent submitted examples of other automobile dealerships that do not have access to their major roads but do not get an adjustment. The Respondent provided one example that does get the allowance. It is a parcel which has legal access via a road plan but no physical road exists, as can be seen on the orthophoto.

[18] Similarly, the shape factor is applied to situations where the shape of the parcel limits its usability and functionality. Examples that receive the allowance were submitted, including an automobile dealership on Macleod Trail in the Manchester area on a Z shaped parcel that required the building to be sited diagonally to fit. Other examples were very narrow parcels that had reduced utility. The subject is a very large site, and the potential to develop is not limited by its shape.

[19] The Respondent submitted the Property Sale Request for Information from the transfer of the subject land on December 16, 2008 in which the question with respect to whether there were any features of the property which affect the property value in a negative or positive way was answered no. Accordingly, the Respondent stated no adjustment was warranted for the subject property and the assessment should be confirmed.

Complainant's Rebuttal

[20] The Complainant agreed that the examples presented by the Respondent represent situations with greater encumbrances than the subject, but disputed the implication that the adjustment is applied only in such extreme instances. The Complainant presented a parcel at 7777 110 Ave NW in where a limited/restricted access allowance was granted, and it was merely at the end of a cul-de-sac with very small frontage. Therefore, an adjustment for the subject site is appropriate and the land value should be reduced by 25%.

Board's Reasons for Decision:

Issue 1.

[21] The Board did not accept the Complainant's argument that the BCN of the subject should be the same as Charlesglen Toyota. It was clear that components in the Charlesglen cost calculation (storage and car wash), were not present in the subject improvement assessment. The individual rates for each component were not supplied therefore the Board could not determine whether these components would change the overall cost per square foot, but was of the opinion that it could.

[22] The Board finds that it is inappropriate to cost the vehicle tower as if it were several levels of automobile showroom when in fact it is clearly a glass walled elevator shaft with no floors or interior finishes. The Respondent was unable to provide a cost based on the actual components. On review of the limited information that was available, the Board determined that the four 1,120 sf levels of automobile showroom space should not be included in the cost of the tower but that the 1,120 sf of mechanical penthouse should remain. Using the depreciated

improvement rate of $190.27 for the four floors of automobile showroom results in a cost of $852,409 which, in the opinion of the Board, should be deducted from the improvement assessment. With GST adjustment the net reduction to the assessment is $811,818 resulting in a value of $15,558,182 truncated to $15,550,000.

Issue 2.

[23] A reduction to the land rate for limited/restricted access was not supportable. In the Board's opinion, the benefit of exposure to Barlow and Deerfoot Trails balances the disadvantage of the circuitous access. The expense of the eye-catching display tower could have been incurred to take advantage of this very high visibility. It would not be reasonable to expect direct access to the highways and the Board agrees that the access to the subject is not directly from a major road. However, the Board is convinced that the high visibility would be recognized in the marketplace to outweigh the lack of direct access.

[24] The example provided by the Complainant to support a limited access allowance due to location on a cul-de-sac had insufficient detail for the Board to evaluate why it was granted the allowance. While the map showed the cul-de-sac, there was no orthophoto showing the road actually existed. Even if the road did exist, the Board is of the opinion that one example of an allowance granted without proper justification on a distant parcel does not support granting a 25% reduction for the subject.

[25] With respect to an allowance for shape, the Board agrees with the Respondent that on a 5 acre site, the development potential of the parcel is much less impacted by shape than on a smaller parcel. Accordingly the shape adjustment was likewise not justified.

DATED AT THE CITY OF CALGARY THIS 17th **DAY OF** July **2013.**

H. Kim
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complaint Form
2. C2	Complainant's Disclosure
3. R1	Respondent Disclosure
4. C3	Complainant's Rebuttal

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.