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:

Midsun Holdings 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:	**200514008**
LOCATION ADDRESS:	**11888 Macleod Trail SE**
FILE NUMBER:	**71754**
ASSESSMENT:	**$5,330,000**

This complaint was heard on the 25th 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's presentation, the Respondent stated that the Complainant had not presented any market evidence, hence there was no evidence that the issue that forms the basis of the complaint actually exists in the marketplace. Accordingly, the Respondent stated that the Complainant had not met onus and made an application for the Board to confirm the assessment without considering the Respondent's submission.

[2] The Complainant countered that the Respondent could have made that application in their disclosure, but had not, and that it is inappropriate to bring it up at this time. With respect to onus, in the absence of sales, there is no market evidence to present, but it is obvious that land that allows more development is more attractive. The basis of the complaint is that the subject should not be assessed the same as land with greater development potential, and this goes to equity. The Complainant contends that onus has been met and the Board should consider the complaint on its merits.

[3] The Board considered the positions of the parties and determined that the Complainant had provided sufficient grounds to cast some question as to the correctness or fairness of the assessment set for the subject property. The Board notes that the purpose of the complaint process is to provide an avenue for a taxpayer to challenge the amount of the assessment. The quality of the evidence in support of such a challenge goes to weight, and lack of market evidence should not deny the Complainant the legislated right to challenge the assessment. Therefore, the Board determined that the Respondent's submission was necessary and the hearing proceeded on that basis.

Property Description:

[4] The subject is an automobile dealership consisting of a combined automobile showroom and garage constructed in 2004 on a 125,942 sf (2.89 ac) parcel located on the east side of Macleod Trail just south of Anderson Road SE, operating as Kramer Mazda. The parcel is roughly semicircular and is accessible from a right-only exit lane from northbound Macleod Trail which loops around the site to join Lake Fraser Drive SE which forms the north and east boundary of the parcel. The property is zoned Commercial Corridor 3 (C-COR3) f0.32 h15 which permits a maximum floor area ratio (FAR) of 0.32 and height of 15 metres. It is assessed on the cost approach, using data by Marshall & Swift (M&S) to value the improvement, added to the market value of land as if vacant. The land rate is set 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 improvement is assessed at $2,803,575 and the land value is $2,530,420 totalling $5,333,995 which truncated results in the assessment under complaint.

Issues:

[5] The Complaint form identified one issue which was separated into two issues at the hearing:

1. The assessment of the subject property's land is not equitable, when compared to similar, nearby properties.
2. The assessment ignores CARB 1546/2012-P

Complainant's Requested Value: $4,700,000

Board's Decision:

[6] The assessment is confirmed at $5,330,000

Position of the Parties

Issue 1 – Reduction of land assessment due to low FAR:

Complainant's Position:

[7] The subject parcel has no influences applied to the land assessment, but has an unusually low FAR for C-COR3 in the Macleod Trail corridor. Land Use maps show that typical FAR is 1.0 to 3.0 compared to 0.32 for the subject. As such, the subject's land use designation precludes the kinds of intensive development normally associated with commercial land and available to C-COR3 land on Macleod Trail. The Complainant presented a chart of influences that the Respondent applies to non-residential land, and pointed to an influence for "Land Use Restriction" with a -25% adjustment. This adjustment should be applied to recognize the significantly lower development potential of the subject land.

[8] The Complainant stated that not applying this influence is inequitable. A chart of nearby car dealerships and two non-dealership parcels along Macleod Trail show that they have greater allowable FARs (1.0 and 3.0) compared to the subject, but have the same base C-COR land rates applied. On a developable area basis (land assessment per square foot of total allowable floor area), the subject land is assessed at $62.79/sf whereas the dealership comparables are assessed at a range of $8.12 to $25.34/sf.

[9] The Complainant presented examples of four office and hotel developments along Macleod Trail that have FARs of 0.78 to 2.56 which could not be developed on the subject site. Clearly, sites with higher allowable FAR are superior to the subject and the 0.32 FAR is atypically low and deleterious to its market value.

Respondent's Position:

[10] The Respondent stated that there is no evidence that there is a relationship between FAR and sale price. The Complainant did not present any market evidence, and an analysis of the comparable dealerships submitted by the Complainant demonstrates that the actual FAR developed on the parcels range from 0.11 to 0.29 notwithstanding the allowable FARs of 1.0 to 3.0. All of the comparables could be developed with the 0.32 allowed on the subject parcel. The Respondent further noted that the dealership immediately to the north of the subject has a land

use designation of C-COR3 f0.26 which is 0.26 allowable FAR, lower than the subject. That property is not under complaint, suggesting that the owner of that property does not consider the 0.26 FAR to be a detriment.

[11] Two sales of C-COR land were presented to show that there was no significant difference in market value of land with 1.0 vs. 2.0 FAR. A 15,152 SF parcel at 1319 Edmonton Trail NE zoned C-COR2 sold for $1,200,000 in June 2012. Removing the +5% corner influence, the parcel sold for a base price of $75.43/sf for FAR 1.0 land. A 19,602 sf parcel at 4504 17 Ave SE zoned C-COR1 sold for $954,000 in March 2010 time adjusted to $1,007,042.40. Adding back in the reduction applied to that parcel for environmental concerns, it sold for a base price of $64.21/sf for FAR 2.0 land, i.e. less than the FAR 1.0 land. This demonstrates that there is no relationship between FAR and market value.

[12] The high intensity developments along Macleod Trail presented by the Complainant were constructed between 1970 and 1979. Some exceed the allowable density under the current zoning and could not be rebuilt to the existing densities.

[13] The Respondent presented excerpts from the Land Use Bylaw 1P2007 (LUB) to show that there are provisions in the LUB to amend the land use designation of a parcel, and that there are numerous allowable uses in the C-COR3 district. The Complainant has not demonstrated that the subject land value should be lower due to its lower allowable FAR.

Complainant's Rebuttal:

[14] There are no market sales to support the issue of FAR due to the lack of C-COR sites with such a low FAR. Treating dissimilar properties the same is just as inequitable as treating similar properties differently. The property to the north of the subject is also over-assessed and the fact that it is not under complaint is irrelevant to the subject hearing. The Complainant presented an excerpt from *Bramalea Limited (Trizec Equities Limited) v. Assessor of Area 9 – Vancouver* (1990) BCCA 277 to suggest that the Board should reduce the assessment of the subject property to preserve equity notwithstanding its inability to provide relief to the neighbouring parcel that had not complained.

[15] The Complainant disputed the relevance of the sales presented by the Respondent and suggested that no conclusions could be drawn from them because:

- The sample size is too small to determine which factors contribute to market value.
- The land use designations are different from each other and from the subject.
- The FARs are in the "typical" range of 1.0 to 3.0 and do not show that a parcel with a much-below-typical FAR would not be penalized in the market.
- The locations are distant from each other and the subject.
- The sale prices were adjusted for corner influence, time and "environmental concerns" with no evidence provided in support of the adjustments. The sale report from Commercial Edge made no mention of environmental concerns for the 17 Ave SE parcel, which the Complainant noted was also a corner parcel but the Respondent's analysis does not include it.
- The sales each have a parcel size of less than 20,000 sf and are not comparable to the subject at 125,942 sf.

The sales do not refute the Complainant's arguments and do not support the Respondent's statement that there is no relationship between FAR and sale price.

[16] The adjustments for vacant land influences are intended to allow for differences between an encumbered property and one that is not subject to those encumbrances. FAR of well below the typical range is clearly an encumbrance that should be recognized. The Complainant requested that the -25% adjustment should be applied to the subject land.

Respondent's Rebuttal:

[17] The Respondent disputed the Complainant's characterization of *Bramalea* and presented *Bentall Retail Services et al v. Assessor of Area 9 – Vancouver* (2006) BCSC 424 which states that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside that range of values that is equitable, that an adjustment is required.

Issue 2 – The assessment ignores CARB1546/2012-P:

Complainant's Position:

[18] The 2013 assessment ignores the findings of CARB1546/2012-P which was the decision with respect to the 2012 assessment of the subject property. The Board in that decision found:

> [22] ... the subject's FAR of 0.32 is atypical of comparable properties with C-COR3 land use designations. A typical FAR for C-COR3 tended to be between 1.0 and 3.0 ...
>
> [29] Like land use designation, FAR is a reasonable consideration of what a willing buyer would be willing to pay for land with similar land use designation, to other land that is not so atypically restricted. It is reasonable to assume that a potential purchaser of property would be willing to pay more for land where the developable maximum floor area is greater, all other things being equal.

The land assessment for 2012 was varied by -25%. While the Respondent lowered the land assessments for large parcels of C-COR land for the 2013 assessment, the Board's findings still indicate that the subject property's land should carry a lower assessment than land with less restrictive FARs. Issue 1 in the subject complaint is entirely in keeping with the Board's findings for the subject property from last year and this same adjustment should be applied to the 2013 assessment.

Respondent's Position:

[19] The Respondent stated that the evidence in the 2012 hearing was different from that presented in the subject hearing and included sales comparables. The land rates for 2013 are lower than for 2012, and the same C-COR rates are applied city-wide whereas for 2012 Macleod Trail had different rates. Therefore the decision in CARB1546/2012-P is not relevant to the subject complaint and a -25% adjustment to the land rate is not supportable. Further, if past decisions are to be considered relevant, the Respondent presented CARB 2048/2011-P which was the decision on the 2011 complaint of the subject property, in which the assessment was confirmed.

Board's Reasons for Decision:

Issue 1 – Reduction of land assessment due to low FAR:

[20] The Board agrees with the Complainant that the two sales presented by the Respondent do not support the Respondent's statement that there is no relationship between FAR and sales price. The differences in location, land use designation and amount of adjustments applied to the two sale prices preclude the drawing of any meaningful conclusion with respect to whether

or not the sales showed that FAR does not affect price.

[21] The Board agrees that it is logical that a C-COR3 parcel with allowable FAR in the typical range of 1.0 to 3.0 would be more attractive in the marketplace than an identical 0.32 FAR parcel. However, the Board was presented with no evidence that the marketplace would apply -25% for less than typical FAR, only that the Respondent's adjustment for "Land Use Restriction" was -25%.

[22] The evidence indicated that the actual FAR of the automobile dealerships and the two non-dealership comparables are below 0.32 FAR. The Board infers that some uses, likely those requiring large parking areas, may be developed to low FARs and do not maximize the FAR allowable on their parcels. Accordingly, the Board is unable to conclude that a willing seller would accept 25% less for a parcel simply because its allowable FAR, notwithstanding it is sufficient for a willing purchaser's proposed development, is below the typical range for other parcels. While it stands to reason that there might be a difference in market value, in the absence of evidence to quantify it or even to demonstrate its existence, the Board could not agree that the requested -25% adjustment was appropriate.

[23] The Complainant's equity argument was based on the contention that parcels with typical FAR were assessed at the same rate as the subject with less than typical FAR. The usual equity argument is an assessment that is greater than that of a similar parcel, and suggesting that the value should be the same. In such a situation, an argument for reduction based on equity could succeed despite lack of market evidence if similarity is proven. In the subject situation, an argument for reduction based on equity must be accompanied by support for the quantum of the requested reduction. In the absence of evidence to demonstrate that parcels with less than typical FAR actually do sell for less in the marketplace, the Board could not grant a reduction on the basis of equity.

Issue 2 – The assessment ignores CARB1546/2012-P:

[24] The Board is of the opinion that the decision on a previous complaint of the subject may be relevant and ought to be considered, but does not agree that a decision should necessarily be carried forward. An inspection of the 2011 and 2012 decisions indicate that the evidence was different in each of those hearings, and from the subject hearing. In particular, market evidence was presented at the 2012 hearing that may have supported the quantum of the reduction granted, while in the subject hearing there was no market evidence to support a change in the assessment.

DATED AT THE CITY OF CALGARY THIS 31 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
5. R2	Respondent'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.