

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:

HEART RIDGE HOLDINGS LTD.
(as represented by BRENDA MCFARLAND PROPERTY TAX CONSULTING),
COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Earl K. Williams, PRESIDING OFFICER
K. B. Bickford 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: 200165298

LOCATION ADDRESS: 14111 MACLEOD TRAIL SW

FILE NUMBER: 71836

ASSESSMENT: \$4,470,000

This complaint was heard on 30th day of August, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, and Boardroom 5.

Appeared on behalf of the Complainant:

- B. MacFarland Agent, Brenda MacFarland Property Tax Consulting
- N. Laird Agent, Brenda MacFarland Property Tax Consulting

Appeared on behalf of the Respondent:

- T. Luchak Assessor, City of Calgary

Board's Decision in Respect of Procedural or Jurisdictional Matters

[1] The Board advised the parties that the evidence and arguments to be presented in respect of the hearing will be heard by a Board comprised of 2 members as provided for by Section 458(2) of the Municipal Government Act.

[2] No additional Procedural or Jurisdictional Matters were raised by the parties.

Property Description

[3] The subject property at 14111 Macleod Trail SW is a 55,659 square foot (sq. ft.) building on 6.51 acres of land with a 1977 approximate year of construction (ayoc), assigned a C quality rating in the Community of Shawnee Slopes, the Property Use: Industrial, the Sub Property Use: IN0901 Greenhouse/Nursery – Retail/Wholesale Operation and Land Use Designation: Direct Control Districts.

[4] The assessment was prepared on the Cost Approach with an influence adjustment of -25% for Limited Access.

Issues

[5] Should the land assessment calculation be based on the Non-Residential Land Rates for Zoning C-6 or COR3?

[6] Should the -25% influence adjustment identified as Land Use Restriction be increased?

[7] Should the subject property receive a -25% influence adjustment for Limited Access?

[8] Is the improvement assessment incorrect and inequitable, due to incorrect measurements, quality rankings, ages and occupancy types?

Complainant's Requested Value: \$2,500,000

Board's Decision

[9] Based on the evidence and argument presented the Board supports the determination of the assessment based on the following:

- 1) the C-6 Land Rate;
- 2) a Land Use Restrictions Influence Adjustment of -25% be applied to the 6.51 acres;
- 3) an additional Land Use Restrictions Influence Adjustment of -25% be applied to the 3.48 acres governed DC99Z2001; and
- 4) a Depreciated Cost of \$991,300 for the assessed tenant improvements.

[10] Based on the Board's decision outlined in paragraph [9] the calculation of the assessment is as follows:

- 1) Land Assessment: \$3,506,222
- 2) Application of the Land Use Restriction of -25%: (\$876,555)
- 3) Application of the Land Use Restriction of -25% on 3.48 acres: (\$351,430)
- 4) Net Land Assessment: \$2,278,237
- 5) Assessment Tenant Improvements: \$991,300
- 6) Assessment \$3,269,537

[11] The assessment is reduced to \$3,260,000.

Position of the Parties

[12] The Complainant and Respondent presented a wide range of evidence consisting of relevant and less relevant evidence. In the interests of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at a time of the hearing.

[13] The Complainant's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the exterior and interior of the subject property, the City of Calgary 2013 Property Assessment Detail Report, the City of Calgary 2013 Assessment Explanation Supplement Industrial & Commercial Vacant Land and Cost Approach, Land Use Bylaws, 2013 Non-Residential Commercial Land Influence Adjustments table, 2013 Non-Residential Commercial Land rates and Marshall & Swift information.

[14] The Respondent's evidence package included a Summary of Testimonial Evidence, a map identifying the location of the property, photographs of the exterior of the subject property, the City of Calgary 2013 Property Assessment Summary Report, the City of Calgary 2013 Assessment Explanation Supplement Industrial & Commercial Vacant Land and Cost Approach, Land Use Bylaws Marshall & Swift Summary, excerpts from applicable legislation, excerpts of technical information, as well as a 2011 Assessment Review Board decision for the subject property in support of their position.

Issue – Land Use Designation

Complainant's Position:

[15] The Complainant reviewed the City of Calgary Land Use District maps on pages 11-12 of Exhibit C1, with a print date of February 2013, which identify the land use designation for the subject property to be DC103Z86 (3.03 acres) and DC99Z2001 (3.48 acres). The land use for each designation is a garden and landscape sales centre, greenhouses and utilities. Further the Permitted and Discretionary Use Rules that apply are the C-6 Highway Commercial. Supporting documentation for the land use is provided on pages 17-20 of Exhibit C1.

[16] A review of The City of Calgary 2013 Assessment Explanation Supplement (AES) on Page 13 of Exhibit C1, determined the Land Use Guidelines are identified as Commercial-Corridor 3 (C-COR3) which is not consistent with the land use maps. Further, the Permitted Uses for C-COR3 (page 30 Exhibit C1) make no reference to garden and landscape sales centre and greenhouses.

[17] The Complainant notes that the City of Calgary has designated a land use for the subject property which is inconsistent with the Land Use District maps and the permitted uses which are developed on the lands. The Direct Control Guidelines were established under the previous Planning Land Use Bylaw and were grandfathered into the new Bylaw.

[18] Application of the C-6 Zoning land rate as presented in the 2013 Non-Residential Land Rates (page 22 of Exhibit C1) calculates the land assessment prior to the application of influence adjustments to be \$3,506,222 compared to the Respondent's C-COR3 calculation of \$4,108,460.

[19] In summary the Complainant argues that the Land Use District supports the land use designation for the subject property to be DC103Z86 and DC99Z2001. Application of a C-6 land rate calculates a pre influence adjustment of \$3,506,222.

Respondent's Position

[20] The Respondent reviewed particulars of Bylaw No. 103Z86 and 99Z2001 (pages 20-23 Exhibit R1) which are applicable to the subject property as identified in the maps on pages 20 and 22.

[21] In summary the Respondent argued that the C-COR3 applies to the subject lands.

Board's Reasons for Decision

[22] Based on the evidence and arguments presented the Board supports the C-6 Land Rate should be applied in the determination of the land assessment.

Issue – Influence Adjustment: Land Use Restrictions

Complainant's Position

[23] The Complainant advised the Board that the 2013 AES provides a -25% adjustment for Limited Access which is defined in the 2013 Non-Residential Commercial Land Influence Adjustments table (page 21 of Exhibit C1) as follows :

"Limited Access: Is applied to properties which cannot be easily accessed in such a way as to inhibit development."

[24] The Complainant reports that they were informed orally by the Respondent that the Limited Access influence on the AES should be listed as "Land Use Restriction" which means that a Land Use Restriction influence adjustment has been applied. This explanation is confusing as the Complainant's position is that the subject property should receive two influence adjustments; one for Land Use Restrictions and another for Limited Access.

[25] It was agreed to proceed with separate arguments for each of the issues related to Influence Adjustments; commencing with the Land Use Restrictions which is not formally identified on the 2013 AES.

[26] The uses of the lands are governed by Bylaws DC103Z86 which governs 3.03 acres and DC99Z2001 which governs 3.48 acres. The Land Use Restriction is defined in the 2013 Non-Residential Commercial Land Influence Adjustments table (page 21 or Exhibit C1) as follows:

"Land Use Restriction: Is applied to properties which, as a result of a caveat, covenant or Direct Control (DC) Bylaw, have restricted development potential that similar properties are not affected by."

[27] The land use of the subject as a commercial lot is negatively influenced by:

- 1) permitted use for all of the lands is for only a single low-intensity use;
- 2) a Caveat on all the land that requires the owner of the land to offer the land to the City of Calgary before any sale can occur;
- 3) 3.48 acres of the land governed by DC99Z2001 introduces a number of landscaping requirements and restrictions;
- 4) the 3.48 acres of land is crisscrossed with easements, right of ways and other encumbrances, refer to the map on page 10 Exhibit C1, which renders very little of the land as developable; and
- 5) the lack of direct access to the 3.48 acres from a municipal road, the only access is through the 3.03 acres which has access to a municipal road.

The Complainant argued that the above influences and restrictions fully meet the definition of Land Use Restriction. Considering the number and magnitude of the restrictions on the use of the subject property and the Caveat registered by the City of Calgary, the Complainant requested a -25% influence adjustment for the 6.51 acres.

[28] An -25% influence adjustment is requested for the 3.48 acres of land governed by DC99Z2001 is crisscrossed with easements, right of ways and other encumbrances, which renders very little of the land as developable.

Respondent's Position

[29] The Respondent argued that the development of the lands is not limited and the caveat that requires the owner to offer the land to the City is not a limitation on the sale and development of the lands.

[30] In summary the Respondent argued that a -25% influence adjustment is applied and identified on the AES as Limited Access. Further there is no basis for an additional -25% adjustment for the 3.48 acres of land governed by DC99Z2001.

Board's Reasons for Decision

[31] The subject property has a total land area of 6.51 acres which is two parcels of land, 3.03 acres with access from a municipal road and governed by Bylaw DC103Z86 and 3.48 acres which is governed by Bylaw DC99Z2001.

[32] The restrictions and influences outlined by the Complainant in paragraph [27] and supported by documentation in Exhibit C1 meet the definition of Land Use Restrictions which provides for a -25% influence adjustment to the base rate.

[33] The request for an additional influence adjustment for the land governed by DC 99Z2001 is based on the impact that the easements, right of ways and other encumbrances will have on the development of the land.

[34] Based on the arguments and evidence presented, the Board supports a -25% influence adjustment for Land Use Restrictions to be applied to the land base rate for 6.51 acres. Also there is support for an additional -25% influence adjustment for the 3.48 acres of the land governed by DC 99Z2001.

Issue – Influence Adjustment: Limited Access**Complainant's Position**

[35] As noted in paragraph [25] the matter of the Limited Access influence adjustment would be argued separately.

[36] The Complainant advised the Board that the 2013 AES provides a -25% adjustment for Limited Access which is defined in the 2013 Non-Residential Commercial Land Influence Adjustments table (page 21 of Exhibit C1) as follows:

"Limited Access: Is applied to properties which cannot be easily accessed in such a way as to inhibit development."

[37] Following a review of the access limitations to the lands the Complainant advised the Board and the Respondent that the -25% influence adjustment is acceptable as long as it is understood that this adjustment applies to Limited Access as reported on the 2013 AES.

[38] In summary the Complainant emphasized that there are 2 issues in respect of influence adjustments; Land Use Restrictions and Land Access.

Respondent's Position

[39] The Respondent argued that the subject property is adjacent to Macleod Trail and there is access directly to the subject property as supported by the photographs on pages 13-18 of Exhibit R1. Further, the definition of Limited Access includes a reference to inhibiting development of the lands, which does not apply to the subject lands.

[40] In summary the Respondent argued that there is no basis for a -25% influence adjustment for Limited Access. Further the -25% influence adjustment noted on the AES is maybe identified as Limited Access but it applies to Land Use Restriction as noted in paragraph [24].

Board's Reasons for Decision

[41] In their arguments both parties referred to the definition of Limited Access. The Complainant in paragraph [36] provided the definition of Limited Access from the 2013 Non-Residential Commercial Land Influence Adjustments table (page 21 of Exhibit C1).

[42] Based on the arguments and evidence presented the Board determined that the subject property does not meet the definition of Limited Access as the land can be readily easily accessed and the development of the lands is not inhibited by nature of the access.

Issue – Assessment Tenant Improvement**Complainant's Position**

[43] The Complainant argued that the process of determining the Marshall & Swift cost estimates is complicated because the areas have changed between the Respondent's 2011 Property Costed Approach Summary (pages 46-48 of Exhibit C1) which reported an area of 27,653sq. ft. It appears that this area identified as the greenhouse, may have been excluded from the calculation.

[44] The Complainant reviewed with the Board and the Respondent a blueprint which identified the areas of the buildings totalled 28,006 sq. ft.

[45] The Complainant reviewed the Marshall & Swift estimate (pages 49-50 of Exhibit C1) which was prepared on the area referenced in paragraph [44]. The estimated total cost depreciated was reported as \$832,786.

[46] In summary the Complainant argued that based on the area supported by the blueprints and the Marshall & Swift estimate, which recognized the quality and effective age of the improvements, the depreciated cost of \$832,786 should be added to the land value to arrive at the total assessment.

Respondent's Position

[47] In regards to the change in area the Respondent acknowledged on page 4 of R1 in the section titled Issue 4: The subject's improvement assessment is incorrect and inequitable;

"At the moment we are looking into that issue because if the area is assessable it should be on the roll. I'm not sure why the complainant would bring this up, but we are looking into it. If it is found that it should be assessable, we will amend the complainants assessment upward later in the year or in time for next year."

[48] The Respondent reviewed the Marshall & Swift estimate (pages 10-11 of Exhibit R1) prepared on the total area of 27,677 sq. ft. and reported the estimated total cost depreciated as \$1,461,698.

[49] In summary the Respondent argued that the Marshall & Swift estimated cost is based on the area determined by the Respondent. Considering the quality and effective age of the improvements, the depreciated cost is \$1,461,698.

Board's Reason for Decision

[50] In respect of the area to be utilized in the preparation of the Marshall & Swift estimate the Respondent acknowledged as noted in paragraph [47] that there may be a disagreement on the area. In response to the area the Complainant presented a blueprint which supported an area of 28,006 sq. ft. The Board decided to accept the area provided by the Complainant.

[51] A review of the application of the Marshall & Swift methodology by the Complainant and the Respondent determined that the improvements were classified as the following occupancy types Warehouse Showroom Store, Mezzanine office and Storage Warehouse. Their approaches differ primarily in terms of:

- 1) Effective Age: the Complainant used an effective age of 35 years for the Warehouse Showroom Store Mezzanines Office improvements and 11 years for the Storage Warehouse improvements while the Respondent used 21 years for all of the Warehouse Showroom Store Mezzanines Office and Storage Warehouse improvements.
- 2) Quality Ranking: both parties applied a quality rank of 2.0 for all improvements except for the mezzanine office area where the Complainant reduced the quality ranking to 0.5 while the Respondent retained a 2.0 ranking.
- 3) Depreciation Physical & Functional: the Respondent applied 28.5% depreciation to all of the improvements, whereas the Complainant applied 78.0% depreciation to the Warehouse Showroom Store Mezzanines Office improvements and 9.0% depreciation to the Storage Warehouse improvements.

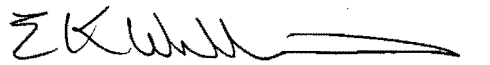
[52] The Board's lack of access to the Marshall & Swift calculator required that the Board base decisions on the calculations presented by the parties.

[53] Following a review of the methodologies the Board accepted:

- 1) the Complainant's Total Cost new calculation of \$1,622,297 as this was based on the area supported by the blueprints;
- 2) the Respondent's calculation for the Physical & Functional Depreciation of \$581,431 as this was more reflective of the effective age of the building and the Board felt the Complainant's 78.0% depreciation was an over estimation; and
- 3) the Respondent's calculated depreciation of \$581,431 equates to approximately 35.8% of the Complainant's Total Cost new.

[54] Based on the evidence and arguments presented the Board calculated the Depreciated Cost inclusive of Goods and Services Tax (GST) to be \$1,040,866 and net of GST to be \$991,301, rounded to \$991,300.

DATED AT THE CITY OF CALGARY THIS 27 DAY OF November 2013.



Earl K. Williams
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Subject Property Disclosure
3. R1	Complainant Rebuttal
	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.*

FOR ADMINISTRATIVE USE

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	RETAIL	Stand Alone	Cost Approach	Land Value Improvement Calculations