



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 MacFarland Property Tax Consulting), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

*F. Wesseling, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
G. Milne, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 200165298

LOCATION ADDRESS: 14111 MacLeod Trail SW

FILE NUMBER: 75024

ASSESSMENT: \$4,220,000

This complaint was heard on 7th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

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

Appeared on behalf of the Respondent:

- *D. Gioia, Assessor, City of Calgary*

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the Act). The parties did not object to the panel representing the Board as constituted to hear the matter. No procedural or jurisdictional matters were raised and the merit hearing proceeded.

Property Description:

[2] The subject property is located along MacLeod Trail and is commonly known as Greengate Garden Centres. The property is accessed from Shawnee Drive SW and is bounded by MacLeod Trail and the Canadian Pacific Rail right of way. The property contains 6.51 acres and is well developed with a retail garden centre/greenhouses consisting of 55,659 square feet and parking areas. The City of Calgary Land Use Bylaw classifies the property Direct Control (DC) Direct Control District by means of two separate bylaws (No. 103Z86 and No. 99Z2001).

Issues:

The Complainant raised the following matter in Section 4, item 3 of the Assessment Complaint form: Assessment amount

The issues were further clarified as:

[3] The -25% adjustment to the land assessment for Direct Control (DC) restrictions is insufficient.

[4] The assessment for the improvements has not been adjusted for GST (This issue was withdrawn at the hearing).

Complainant's Requested Value: \$3,750,000 revised at the hearing to \$3,800,000.

Board's Decision:

[5] Upon reviewing the evidence provided by the parties, the Board found that the Complainant failed to demonstrate that the assessment was in excess of market value.

[6] The Board confirms the assessment at **\$4,220,000**.

Legislative Authority, Requirements and Considerations:

[7] Both parties submitted background information in the form of photographs, aerials, site maps as well as evidence on the issues at hand. In the interest of brevity, the Board will restrict its comments to those items the Board determined to be 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 the time of the hearing.

[8] The Board was presented with a number of previous decisions of the Assessment Review Board. While the Board respects the decisions rendered by those Boards, it is mindful that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. This Board will therefore give limited weight to those decisions, unless the issues and evidence are shown to be timely, relevant and materially similar to the subject complaint.

Position of the Parties

Complainant's Position:

[9] The Complainant identified two issues in its formal written submission: a) The 25% adjustment to the land assessment for DC restrictions is insufficient. b) The assessment for improvements has not been adjusted for GST. The second issue was withdrawn and a revised requested assessed value was outlined. The verbal presentation was focused on the first issue.

[10] The Complainant provided a background by means of maps and bylaws that the two DC bylaws imposed on the property severely impact its developability and thus in turn its value. The DC bylaws strictly limit the use of the property to a retail garden centre. In addition the Complainant noted that the undeveloped part of the property is significantly impacted by easements and utility right of ways thereby further reducing the developability of the subject site.

[11] The City of Calgary has a caveat on the property that provides it the first right of refusal should the subject site be put on the open market. The complainant suggested that this caveat also impacts the market value of the property.

[12] Specifically the Complainant is requesting an additional 25% adjustment to assessed value on 3.48 acres of the parcel which is the portion most severely impacted by the easements and right of ways. The only evidence presented to the Board to support the request was a Board decision (71836P-2013) from the previous valuation period.

[13] **In Rebuttal**, the Complainant emphasized the impact of the easements, right of ways and other encumbrances on the developability of the subject property and in turn its market value. An additional 25% influence adjustment for that portion (3.48 acres) of the property is

warranted. In support for its argument the Complainant presented *T.Eaton Co v Alberta Assessment Appeal Board* with emphasis on the difference between market value and special value. In addition, the Complainant suggested that the low site coverage of this property is a direct result of the easements, right of ways and other encumbrances. Comparisons were presented with other garden centres in the City with regard to site coverage. It was suggested that the low site coverage of the subject property (19.62%) is significantly below competitive garden centres elsewhere in the City.

Respondent's Position:

[14] The City, in its presentation, acknowledges that 2 separate Direct Control bylaws impact this property. The property is unique in that it is separated from adjacent properties by major transportation corridors and very well positioned for the garden centre use. The property is extensively developed with green houses and a retail garden centre as well parking areas.

[15] As part of the property evaluation a Land Use Restrictions influence adjustment of 25% is applied and it is applied for the whole property and is significant and amounts to \$1,046,865. The Complainant has provided no market evidence that the current influence adjustment is insufficient.

[16] The City noted that the previous year's decision by the Board was primarily concerned with an access issue which the Complainant has acknowledged as not being an issue in the current valuation year.

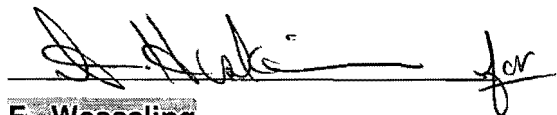
Board's Reasons for Decision:

[17] The impact on property values of Direct Control classification as established by the Calgary Land Use Bylaw was the only issue under consideration by the Board. It was noted by the Board that no evidence was provided that the complainant's client had attempted to change the Direct Control classification for the property. Further the Complainant provided limited evidence with regard to comparable properties as to how the Land Use Bylaw standards impacted market value.

[18] The Board notes that a 25% influence adjustment to assessed value is provided for the entire property. Previous Board decisions provided an additional influence adjustment as it related to access issues. Both parties acknowledge that access is not an issue any longer.

[19] The Complainant was unable to provide market and comparative evidence for the Board's consideration to show that an additional 25% influence adjustment on only a portion of the parcel is warranted.

DATED AT THE CITY OF CALGARY THIS 30 DAY OF July 2014.



F. Wesseling

Presiding Officer

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

NO.	ITEM
1. C1 Assessment Appeal Disclosure Report	Complainant Disclosure
2. C2 2014 Appeal Appendix for 14111 MacLeod Trail SE	Complainant Disclosure
3. C3 Assessment Appeal Rebuttal Report	Complainant Disclosure
2. R1 Assessment Brief	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 MGB Administrative Use Only

<i>Decision No.</i>		<i>Roll No.</i>		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Garden Retail centre	Assessed market value	Land Use Bylaw restrictions	Direct Control classification impact on developability of property.