

Don Cayo: Tax precedent for a big developer will save megabucks for some small Vancouver businesses

If the Property Assessment Appeal Board's decision stands, many tax bills will be dramatically lower

BY DON CAYO, VANCOUVER SUN COLUMNIST SEPTEMBER 26, 2014

VANCOUVER — A big Vancouver development company's victory in a landmark property assessment appeal has huge implications for some — although not all — small neighbourhood businesses that have been staggering under the weight of soaring property taxes.

The Property Assessment Appeal Board's decision, posted late Thursday, is technical in scope. Yet if it stands — B.C. Assessment has 21 days to decide if it will appeal — it will lead to a partial system of split assessments that dramatically lower many businesses' property tax bills in several mixed business/residential neighbourhoods where property values are soaring.

The precedent-setting case involves nine lots that Amacon is holding for future development on the 1000-block of Seymour Street. Two of the lots have small, low-value commercial buildings, and two are being used for surface parking. But all are zoned for new multi-story buildings, with one-third commercial space and two-thirds residential.

The problem created by such circumstances is a familiar one for countless small businesses in ripe-for-development neighbourhoods throughout the city. They are located on highly valuable land — worth \$2 million to \$4 million per lot in Amacon's case. Yet the buildings where they conduct business are assessed as having little or no market value — mere teardowns in the eyes of any future purchaser.

It is tough enough for a small business to take on a huge property tax burden based not on what the land is being used for, but what it could be used for in future. But the difficulty is compounded — and this is why Amacon appealed — by the way the assessors and city, each operating in their own silo, gang up to impose the worst of two worlds on the hapless businesses.

The assessors value the land on the basis of what it would be worth for "highest and best use." In Vancouver, this means residential.

But as soon as there is commercial activity on the land — in Amacon's case, renting out as few as 22 surface parking stalls on one of its lots — then the city applies the commercial tax rate, which is 4.2 times higher than the residential rate, to the entire property.

It might be reasonable to peg the assessed value to residential market prices, as is done now. Or it might be reasonable to tax the total value of the land at the commercial rate, as is also done now, since there is a business on it.

What is unreasonable, says Paul Sullivan, senior partner at the property tax consulting firm of Burgess Cawley Sullivan and a vocal advocate for tax fairness, is doing both at the same time. Either the

residential value and the residential tax rate should apply, he argues, or the commercial value and the business tax rate.

Sullivan represented Amacon at the appeal, and he says he would have relished a chance to argue the folly and unfairness of this policy. But the appeal board has no mandate to deal with policy, so what he argued was more technical — not to mention more arcane.

It boiled down to what the law means by “land”. Is it a two-dimensional piece of the planet’s surface where people can, and often do, erect buildings? Or is it three-dimensional, going down into the earth (where a parking garage might go) and into the sky (where a condo tower might soar)?

If the former, then the whole thing is used for business, and the higher tax rate would apply. If the latter, then the “unused” portion of land — the buildable areas above or below ground — should be taxed at the rate that applies to their potential use. In this case, that is the much-lower residential rate.

The appeal board endorsed the second argument, meaning Amacon will now be taxed at the business rate on roughly a third of the value and at the residential rate on the rest. The annual savings will be a few 10s of thousands of dollars for each

lot.

With a precedent set, the same split should apply to tax bills for other businesses located on land zoned for a specific mix of commercial and residential development. And these businesses should see a drop in their tax bills of roughly the same magnitude.

The problem, Sullivan says, is that about 90 per cent of Vancouver’s small businesses that are in this tax predicament won’t benefit because the zoning for their land isn’t specific — it allows for taller buildings, but they could be entirely commercial, entirely residential, or any mix of these two uses. Amacon’s case succeeded only because the zoning spelled out the one-third/two-thirds mix.

So, there is still a political problem to fix — one that Sullivan, as an active member of the Fair Tax Coalition, has been pushing city politicians on, and they have been dragging their feet on, for years.

Council agreed early this year with a recommendation from its tax commission, chaired by UBC professor emeritus Stanley Hamilton, that it should enlist support of the Union of B.C. Municipalities to press the province, which controls the nuts and bolts of tax policy, to allow split assessments across the board. The city’s first opportunity to do so was the UBCM meeting in Whistler this week, but it didn’t even bring the issue to the floor.

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