

Don Cayo: Mega-bucks of Vancouver revenue at risk in assessment dispute

A tax decision by the Property Assessment Appeal Board goes to the Supreme Court

BY DON CAYO, VANCOUVER SUN COLUMNIST NOVEMBER 6, 2014

VANCOUVER— A dispute between a prominent Vancouver developer and the provincial B.C. Assessment agency that would, in usual circumstances, have no implications for the city budget has escalated to now put at risk millions of dollars — maybe tens of millions — in 2015 revenue.

Initially, this was a dispute over whether the development potential of Amacon's under-used downtown lots should be taxed entirely at the commercial property tax rate, which is 4-1/2 times the residential rate, or at a mix of commercial and residential rates. The Property Assessment Appeal Board ruled last month in Amacon's favour, a decision that could reduce the company's property tax bill by well over \$200,000 a year.

Despite setting a precedent that could apply to as many as a few hundred other properties scattered around the city, this outcome mattered not at all to the city budget. Relief for these firms would automatically trigger tiny increases in the tax bills for all 50,000-plus Vancouver businesses, so city revenue would stay the same.

Then three weeks ago, B.C. Assessment decided to appeal the board's ruling to the Supreme Court.

This move, in itself, shouldn't impact the city. But — and here is where the city's money is put at risk — the agency also said it won't apply the board's ruling in its 2015 assessments. This means Amacon and the other properties, many of them valuable and thus liable for hefty tax bills, will get 2015 bills much larger than if B.C. Assessment had honoured the board's ruling.

Not surprisingly, these owners are squawking. They will be represented by 21 of the city's 22 business improvement associations that are collaborating through the Fair Tax Coalition to intervene in the Supreme Court appeal, and at least a few owners are investigating legal options to get the break the board says they deserve on their 2015 tax bills while the court wrestles with the broader issue of whether to uphold the ruling.

The impact on the city will depend on two things: Whether the Supreme Court upholds the ruling, and whether any — or many — affected businesses succeed in legal bids to force B.C. Assessment to abide by the appeal board's decision, at least until the Supreme Court says otherwise.

If B.C. Assessment wins this case, or if its decision not to comply is allowed to stand for the 2015 tax year, the affected businesses will be clobbered with sky-high property tax bills on land valued as if it were all used for high-priced residences, yet taxed as if it had only commercial potential. And they may not have any recourse.

But another can of worms opens up if Amacon wins and if the province's Property Assessment Review Panel — a body empowered to make one-time changes in any given year's assessment roll — upholds the Property Assessment Board's ruling for the 2015 tax year and reverses B.C. Assessment's arbitrary dismissal of it.

Here's why. The city sets its property tax rate based on the total value of all properties as determined by B.C. Assessment, whose intransigence in this case will result in very high values being assigned to the land in question. The budget will be set in December, shortly after the Nov. 15 civic election, and the tax rate will be locked in a few months later. But the deadline for launching appeals isn't until late January, and it is highly unlikely a decision will be rendered before the 2015 tax rate is set in stone. If the panel reduces the assessments after the rate is set, the city will fall well short of its budgeted revenue target.

It is hard to predict how many businesses might appeal, what total value of assessment is at stake, or even how many under-developed properties in the city are covered by specific zoning similar to Amacon's. (Most commercial/residential properties are subject to non-specific zoning, and thus aren't affected by the Amacon decision.)

Paul Sullivan of Burgess Cawley Sullivan, the property tax consultant who represented Amacon during its successful appeal, estimates several hundred under-developed properties are covered by specific zoning similar to Amacon's; city manager Penny Ballem said her staff counts only about 100. Sullivan thinks the total revenue at risk is in the tens of millions; Ballem think that number is too high, but she's not sure what it should be.

What Sullivan can say for certain is that Amacon will appeal its 2015 assessment to the review panel, and he expects many other businesses will as well. After all, they have nothing to lose.

So what happens if some or all these property owners launch successful appeals, and the city suddenly finds next year's business tax base sharply eroded by a review panel decision?

"That's a very valid issue and concern," Ballem told me.

And while she doesn't yet have solid figures, she said, they are being worked on, and a contingency strategy will be worked out as the 2015 budget is prepared.

"There are always risks to revenue," she said. "In 2008, we had a \$13-million drop in revenue, and we managed it. ... We feel comfortable we can manage it again."

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Saturday: This issue seems to be pushing broader issues of property tax hotspots to the forefront.

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