

# Ruling may help ease tax sting

## Court: Developers, community retailers could benefit from possible changes to property assessments

A B.C. Supreme Court decision that favours a large Vancouver developer may also prove to be a boon to hundreds of small local businesses that are being pushed to the wall by soaring property taxes.

But it won't be a straight line from Justice Lisa Warren's judgment, released Monday, to tangible relief on business property tax bills.

This is true for Amacon, the company at the centre of a dispute with BC Assessment over how properties are valued for tax purposes, and even more the case for neighbourhood businesses in somewhat similar, but not identical, situations.

Amacon's case, in a nutshell, is this: It owns nine small lots on the 1000 block of Seymour Street.

They are ripe for development — well-located and zoned for a mix of residential and commercial uses. But right now they are home to only surface parking lots and a couple of small, teardown buildings. BC Assessment values the whole package, as the law requires, at its "highest and best use" — that is, as if it had a high-priced residential tower. But, because the land is being used for a commercial purpose — a relative handful of parking stalls — the commercial tax rate, which is more than four times the residential rate, is applied to the value of not just the land, but also the undeveloped potential for a residential tower.

Amacon thinks that's not fair. So does the BC Property Assessment Appeal Board.

It ruled in late 2014 in Amacon's favour, but BC Assessment appealed this decision to the Supreme Court.

The crux of the matter is whether the property assessment should be split, with the potential residential development valued and taxed at residential rates and the potential commercial development valued and taxed at commercial rates.

Such split assessments aren't only important for developers not yet ready to build, but also for neighbourhood retailers all over the city.

Shopping neighbourhoods — streets like West Fourth, Commercial Drive or Cambie — are typically dominated by older, low-value buildings that sit on astronomically high-value land.

Paul Sullivan, a partner at Burgess Cawley Sullivan and the consultant for Amacon in the court proceedings, says these community retailers were hit with assessment increases of 35 to 70 per cent this year "on top of 30 to 50 per cent last year, and what will be 30 to 50 per cent next year."

As with Amacon, the unused potential of the properties is assessed as if it were high-end residential, yet taxed at the skyhigh business rate.

A key difference — one that makes the application of Monday's decision less certain for community retailers — is that Amacon's zoning specifies what portion of a future development must be commercial and what can be residential. In most neighbourhoods, no ratio is spelled out, which complicates split assessments and which may erode the value of this precedent in future cases.

As well, Warren didn't rule on a specific number for Amacon's valuation.

Rather, she endorsed principles the Appeal Board based its decision on and sent the specifics back to the board.

"In a perfect world," Sullivan said, "BC Assessment and the appellants will sit down now and come up with a reasonable solution."

On that point, it's worth noting two broad points the judge made.

One is that the board is right to rule on the basis of what it sees to be reasonable, not simply on narrow, legalistic points that lead to an unreasonable outcome.

The second — and it's a bit technical — is that land, for the purpose of assessment, isn't just surface area, but also air space above it to the height of a potential development.

These rulings, in my view, open the door even wider to a city-wide system of split assessments.

It's only reasonable — there is no logical, or for that matter, ethical, case that I can see for a worst-of-two-worlds tax burden that has no connection to what the land will actually be used for.

BC Assessment has been out of step not only with the appeal board and now the court, but also with the city and the province, which have both recognized the problem and acknowledged it needs to be fixed.

BC Assessment told me Monday it's still reviewing the decision and has nothing to say at this point, including whether it'll launch yet another appeal.

This reticence is reasonable, I think, given the tight time frame.

But it won't be reasonable to delay a response for long. The provincially mandated assessment authority is going to have to come up with an answer soon. And the court seems to be saying that, whatever it does, it ought to be reasonable.

Gee, I could have told them that.