

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD (CARB)
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(4).

between:

Priszm Brandz Inc., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

P. Irwin, PRESIDING OFFICER

C. McEwen, MEMBER

D. Steele, MEMBER

A hearing was convened on October 13th, 2010 in Boardroom 10 at the office of the Calgary Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta in respect of the Property assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	075022509
LOCATION ADDRESS:	1813 43 ST SE
HEARING NUMBER:	57264
ASSESSMENT:	\$479,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a vacant parcel of land next door to a larger Kentucky Fried Chicken (KFC) site, situated in the Forest Lawn Community. The subject is undeveloped, but improved with landscaping and until recently, had picnic tables for the use of KFC customers. It is a rectangular parcel measuring approximately 122' by 49'. The market value was determined by using the sales comparison approach to value.

PART B: PROCEDURAL OR JURISDICTIONAL MATTERS

There were no objections to the composition of the Board, nor were there any jurisdictional matters.

PART C: MATTERS/ ISSUES

Is the subject property assessed too high ?

The Complainant provided a disclosure package that described the subject property as having a servient relationship to a dominant site adjacent to it. Both properties were owned by Prizm Brandz, operators of the KFC business. The Complainant provided seven examples of properties with a nominal (\$750) assessment for 2008 where the property was required for parking purposes for patrons of the adjacent, going-concern, business establishment. The subject property has significant limitations on its possible development, imposed by the City's Land Use Bylaw (2P80/1P2007). Furthermore, in front of the subject, there is a 10' wide barrier of curbing and landscaping which closes the road to traffic and limits the street access to the subject. The Complainant brought to the Board's attention the results of a 2008 complaint to the ARB and an appeal to the MGB, each of which reduced the assessment on the subject, based on it being "unable to meet the claimed market value due to being, for want of a better term, permanently blockaded". The Complainant requests that a nominal assessment value of \$750 be applied to the subject, or alternatively, that a 75% site influence allowance be applied to the subject, to reduce its value to \$119,500. As support for the 75% allowance, the Complainant referred the Board to CARB decision 0533/2010-P for which a property was given three allowances of minus 25% each for the site influences of shape, residual parcel, and access.

The Respondent's Assessment Brief and testimony emphasized that the Complainant's comparables in support of the servient/dominant argument were different in that each of them were parking lots and each parking lot was required by the adjacent business to make up for parking deficiencies. The subject property does not enable the KFC property to operate. The Respondent conceded that there were negative site influences.

Board's Findings and Reasons in Respect of Each Matter or Issue:

The Board notes that a dominant/ servient relationship usually exists between two different parties, not the same parties, and therefore that argument fails. The Board did not find that the subject could not be developed, and rejects the request for a nominal assessment value. Further, the Board did not find that the subject property had no access to it. Access is, however, limited to either the lane or partial access at the front, due to the road barrier. As well, the Land Use Bylaw limits the development opportunities for the subject, due to setback requirements. The Board did not find the shape of the subject to be of any consequence. The Board finds that a reduction of 50% in the subject property's assessed value, due to the site influences of access limitations and its residual nature (with some guidance from CARB decision 0533/2010-P), would be fair and equitable.

PART D: FINAL DECISION(S)

The Board reduces the 2010 assessment of the subject property to \$239,000.

DATED AT THE CITY OF CALGARY THIS 19 DAY OF OCTOBER 2010.



P. Irwin
Presiding Officer

APPENDIX "A" : ORAL REPRESENTATIONS

PERSON APPEARING

CAPACITY

J. David Sheridan, Linnell Taylor Assessment Strategies, representing Prizm Brandz Inc.
Dale Grandbois *Assessor, City of Calgary*

APPENDIX "B" : DOCUMENTS RECEIVED BY THE ASSESSMENT REVIEW BOARD

Document C – 1 Complainant's Brief (considered)
Document R – 1 Respondent's Brief (considered)

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.*