

**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:

***Stone Lane Properties Ltd. (as represented by Linnell Taylor & Associates),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
K. Coolidge, MEMBER
P. Pask, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	201274636
LOCATION ADDRESS:	7015 – 112 AV NW
HEARING NUMBER:	66495
ASSESSMENT:	\$2,640,000

This complaint was heard on 28th day of June, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *Mr. D. Sheridan - Linnell Taylor & Associates*

Appeared on behalf of the Respondent:

- *Mr. K. Buckry - Assessor – City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is a 177,372 square foot (SF) [4.07 acre (Ac.)] vacant land parcel located in, and part of the new northwest auto mall, adjacent to and just east of Royal Oak Mall and community. The site is located on the south side of 112 AV NW and situated between 71 ST NW and 89 ST NW. The rear lot line abuts Stoney Trail NW expressway. There is no access to the site from 112 AV NW, a major traffic artery.

[4] An 8.0 metre wide access easement runs north/south along the entire east side of the property. It is 9.0 metres from the subject's east boundary and provides a gravelled access to a transmission/communications tower at 69 ST NW and Stoney Tail. The site is assessed at \$2,640,000 at \$14.88 per SF. The \$14.88 per SF is derived from dividing the assessed value by the total site area in SF.

[5] **Issues:**

1. The assessment is incorrect because the site contains undevelopable land which has no value.

[6] **Complainant's Requested Value:** \$1,939,125.

Board's Decision in Respect of Each Matter or Issue:**Issue #1:**

[7] The Complainant provided his disclosure Brief C-1 and identified the precise location of the site in conjunction with other adjacent and nearby properties in this planned auto mall development. He argued that the site is over-assessed. He argued that the assessment is based on a gross property area which improperly includes site areas that are considered "sterilized" by virtue of required building setbacks and access easements.

[8] The Complainant noted that the subject has an 8.0 metre (26.25 ft) wide gravel road on a registered easement that gives access to a communications tower near the intersection of 69 ST NW and Stoney Trail. He also noted that the easement and road are 9.0 metres (29.52 ft) west of the east property boundary. He argued that while there is a paved pathway on this "ribbon" of land between the easement and property boundary, it has no practical utility and is "orphaned" from future potential development. Taken together, the two areas constitute a total of 17 metres of "sterilized" land on the east side of this property.

[9] The Complainant noted that the total length of the east property line is 177.5 metres (582.35 ft), and when multiplied by the 17 metres of easement and "orphaned" strip, some 3,017.50 square metres, or 32,480.10 SF of land is affected.

[10] The Complainant argued that development of the site is also restricted by Land Use Bylaw 84Z2007 which mandates a minimum 6 metre setback for the main building from Stoney Trail NW Transportation and Utility corridor. He argued that there is development precedent for a total 10 metre setback, although he provided no direct evidence. He calculated that the subject's rear property line is 101.90 metres, minus 17 metres equals 84.90 metres. With a 10 metre rear yard setback from Stoney Trail NW, some 849 square metres or 9,138.56 SF is affected.

[11] The Complainant also argued that the City's Land Use Bylaw also requires a main building 6 metre setback from 112 AV NW, and the subject has a frontage of 101.90 metres on that road. He calculated that an additional 5,483.14 SF of land is negatively affected there as well.

[12] The Complainant calculated that a total of 47,101.80 SF of land is "sterilized by these three "impediments". He calculated that at \$14.88 per SF the total negative value is \$700,875, which, when subtracted from the assessment, results in a revised assessment of \$1,939,125.

[13] The Complainant provided a copy of the Alberta Land Titles document which catalogued the history of encumbrances, easements, and interests on the subject's title.

[14] The Complainant acknowledged that other building setback requirements exist in the Land Use Bylaw for the subject, (e.g. side yard; rear yard) however, they relate to building safety standards and related matters. He provided maps and diagrams of the overall development, of which the subject is one part. He provided excerpts of Land Use Bylaw Amendment LOC2006-0037 which regulates development on the site.

[15] The Complainant tendered his rebuttal document C-2 and re-asserted that setback areas have no value in the market because they are "servient" to the "dominant" or usable portion of the parcel. He suggested that no buyer would assign value to lands which cannot be developed.

[16] The Complainant included a copy of ARB 0944/2010-P where the Board reduced the assessment on a vacant downtown corner lot used for surface parking, in part due to building setback issues. He argued that this Decision supports his position with respect to the matter currently before this Board.

[17] The Complainant requested that the assessment be reduced to \$1,939,125.

[18] The Respondent argued that the Complainant has provided no market sales or assessment equity evidence to support his arguments and request. He noted that the Complainant has acknowledged and accepted that the assessed value of the subject is correct, and only questions the application of that value to the entire site.

[19] The Respondent argued that under the Land Use Bylaws governing this site, the entire site area is used to calculate the Floor Area Ratio, which governs the size of the building to be built on the property. He clarified that the City does not use the Complainant's methodology. He argued that the setback areas in question do indeed have value.

[20] The Respondent argued that:

- The Municipal Government Act (MGA) requires the assessment of the entire fee simple interests of a property.
- The MGA requires every municipality to pass a land use bylaw (LUB) which regulates and controls the use and development of land and buildings in a municipality which governs every property.
- The Complainant made no reference to the fact that the lands are also subject to the Northwest Architectural Control Requirements which the landowner drafted and imposed on the lands.
- The setback areas in question do contribute value to the property since they are created for safety, privacy, and environmental protection.
- Setbacks do not restrict the maximum size of an improvement that could be potentially built on a property.
- It is not accepted appraisal practice or theory to exclude setback areas on land parcels.

[21] The Respondent used maps and diagrams and spent considerable time detailing the nature of the overall development of the northwest auto mall and the role and place of the subject in that development. He provided a copy of the Architectural Control Guidelines which the owners prepared and registered on title to the subject and all lands in the broader development concept.

[22] The Respondent argued that any and all restrictions on any property, are reflected or built into the final sale price of that property by the market.

[23] The Respondent argued that the access easement on the site is meant to serve not only the communications tower, but also a series of 3 large future new vehicle storage lots to be used by all auto dealers in this new auto mall. He located the three proposed vehicle storage lots on a schematic of the overall mall development, noting they abutted the north side of Stoney Trail, just south of and abutting the mall proper.

[24] The Respondent argued that the controlled access gravel road on the easement on the site has important value to the subject because the road provides the best access to the new car storage areas, access that is superior to that of any of the other auto dealerships in the mall.

[25] The Respondent also clarified that the walking path on the so called "orphan" parcel located between the gravel road (easement) and the east property line is an integral part of the overall development scheme prepared by the mall owners, and it adds considerable amenity value to the subject and the mall. He requested that the assessment be confirmed.

Board Findings for Issue #1:

[26] The Board finds that the Complainant has provided no market or assessment equity evidence to support his position.

[27] The Board finds that the Complainant accepts the assessment market valuation parameters of the subject, and only objects to the inclusion of Land Use Bylaw required setback and access easement areas, in the calculation of assessed value.

[28] The Board finds that it is not accepted appraisal theory or practice to exclude setback areas and/or easements from property valuations.

[29] The Board finds that the Municipal Government Act requires the assessment of the entire fee simple interests of a property.

[30] The Board finds that while the gravel road easement may limit certain onsite commercial activities on the subject, it nevertheless has been designed into the overall auto mall development scheme by the owners. Therefore, any impact on value the road may have, is reflected in the market value of the parcel.

[31] The Board finds that the so-called "orphan" land between the east boundary and roadway easement on the subject, has value to the subject, and to the overall development scheme as a major paved pathway network, formulated and implemented by the owners to enhance their auto mall concept.

[32] The Board finds that there is no market evidence to demonstrate that the subject suffers in value due to the presence of the 6 metre access easement as alleged by the Complainant.

[33] The Board finds that the Complainant's ARB 0944/2010-P is not relevant to this appeal because the facts in the referenced case are insufficiently similar to warrant a parallel analysis.

Board's Decision

[34] The assessment is confirmed at \$2,640,000.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2012.


K. D. Kelly
Presiding Officer**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure - Rebuttal
3. R-1	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 Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Commercial/industrial land - auto mall	Vacant land parcel	Data corrections - setback and easement areas s/b deleted	Overall parcel value