



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:

***Dal Holdings Ltd. (as represented by Linnell Taylor Assessment Strategies),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***R. Fegan, PRESIDING OFFICER
P. McKenna, BOARD MEMBER
A. Zindler, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	044186609
LOCATION ADDRESS:	2227R Banff Trail NW
FILE NUMBER:	70210
ASSESSMENT:	1,090,000.

This complaint was heard on the 2nd day of July, 2013 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:

- Joel Mayer, (Linnell Taylor Assessment Strategies)

Appeared on behalf of the Respondent:

- Lawrence Cheng, (City of Calgary)

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

[1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is a parcel of vacant land located at 2227R Banff Trail NW. It is comprised of 36,921 square feet. The parcel does not have direct road frontage. The parcel does have frontage on an alley, however as of December 31, 2012 there was a fence separating the subject property from the alley. The subject property is used exclusively for parking for four adjacent businesses, two hotel/motels and two restaurant buildings. There is a restrictive covenant on the title of the subject property restricting its use to parking for the adjacent businesses.

Issues:

[3] The Complainant raised the issue of the dramatic increase in the subject property's assessment, saying it was not justified by the facts. The 2013 assessment had increased to \$1,090,000 from \$1,000 in 2012. The Complainant argued that there had been no change to the property and that there was no reason for such a dramatic increase to the assessed value.

[4] The Complainant argued that the subject parcel was a "servient" site to the four adjacent sites and could not be developed independently from the other parcels.

[5] The Complainant argued that placing a full market value assessment on the subject site while also placing a full (unadjusted) assessed value on the four adjacent properties, amounted to double taxation.

Complainant's Requested Value: \$1,000.

Board's Decision: The complaint is allowed and the assessment is set at \$1,000.

Position of the Parties

Complainant's Position:

[6] The Complainant provided maps and pictures to demonstrate to the Board that the subject property did not have frontage on a municipal street, although it was bounded on the west side by an alley. The Complainant argued that the assessment did not accurately reflect the value of a "land locked" parcel.

[7] The Complainant provided a copy of a letter dated November 27, 1991 from the property owner DAL Holdings Ltd. to the solicitor for General Mills Canada Inc., indicating in the original lease (1991) for the Red Lobster Restaurant that the owner was required to provide 160 parking stalls to the tenant. These stalls were to be available to the tenant for the term of the lease, which was 20 years and 21 days and any subsequent lease renewals.

[8] The Complainant provided a copy of the Land Title Certificate, which described the subject lands as "servient" to the "dominant" lands surrounding the subject parcel. This easement placed on the title of the subject land prevents the land from being used for any purpose other than providing parking for the dominant lands.

[9] The Complainant provided evidence indicating that none of the four improved properties adjacent to the subject property met the minimum parking requirements required by the municipal land use by-law.

[10] The Complainant provided four examples of other properties that were similarly affected by a requirement to provide parking for adjacent sites. These properties had all been assessed by the City at a nominal value of \$1,000.

Respondent's Position:

[11] It was the Respondent's position that the land had utility and value. The Respondent acknowledged that the subject property had no direct municipal road frontage and stated that an adjustment of 25% had been applied to the calculation of the subject property's assessed value.

[12] The Respondent pointed out that the subject and the four "related" properties were all owned by the same company. The Respondent provided a copy of the City of Calgary's Banff Trail Station, Area Redevelopment Plan and pointed out that it was the City's intention to encourage future development in the area of the subject property.

Board's Reasons for Decision:

[13] The evidence of both parties confirmed that the subject property did not have any frontage on a municipal street. Although an allowance of 25% had been applied to the subject property's assessed value there was no explanation of how the respondent had arrived at, either the assessed rate or the "access" adjustment.

[14] The Complainant provided evidence that Easement # 931058774 was registered on the Title of the subject property essentially preventing the owner from using the parcel of land for any purpose other than providing parking for the four improved properties. This easement described the subject property as the "servient" lands and the four adjacent properties as the "dominant" lands.

[15] The Complainant provided evidence that the following properties had similar limitations on their use and in each case had been assessed at a nominal rate of \$1,000. (251 Stewart Green SW, 4680 Macleod Tr. SW, 1106 16 AV NW, 1014 17 AV SW, 1018 17 AV SW) The Respondent provided "Assessment Explanation Supplements" for 1014 and 1018 17 AV SW. These sheets were dated June 14 2013 and showed a market value of \$966,460 and \$991,540 respectively for each of the two parcels but also indicated a "2013 Market Value on the Roll" of \$1,000 for each parcel (R-1 pages 21 and 22). No amended assessment notices were provided.

[16] The Complainant provided a number of previous ARB and MGB decisions including one for the subject property indicating previous Board decisions supporting the use of a nominal assessment in cases where the value of a parcel of land had been "transferred" for all intents and purposes to the adjoining land.

[17] In response to questions from the Board the Respondent stated that to the best of his knowledge the assessed values for the surrounding properties had been arrived at using the income approach with no adjustments for the fact that the actual parking did not meet the by-law parking requirements. The Respondent also acknowledged that no adjustment (other than the restricted access adjustment) had been made to the subject property as a result of the limitations to its current use.

[18] The Board found that the 2013 assessed value did not reflect the characteristics and physical condition of the property on December 31, 2012. The Board found that the restrictions placed on the title of the subject property where characteristics that had an impact on the market value of the subject property. The Board found that in other similar situations the City had used a "nominal" assessed value to account for the fact that the value of one property was essentially transferred to an adjoining property or properties.

[19] In summary, the Board finds the assessed value of \$1,000 is appropriate for the subject property.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2013.

R. Fegan
R. Fegan

Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	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.*