



**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***  
***M. Grace, BOARD MEMBER***  
***J. Pratt, 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:

<b>ROLL NUMBER:</b>	<b>044000909</b>
<b>LOCATION ADDRESS:</b>	<b>2316 16 AV. NW.</b>
<b>FILE NUMBER:</b>	<b>71950</b>
<b>ASSESSMENT:</b>	<b>2,920,000</b>

This complaint was heard on the 19th day of June, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- D. Sheridan (Linnell Taylor Assessment Strategies)

Appeared on behalf of the Respondent:

- S. Turner (City of Calgary)
- N. Domenie (City of Calgary)

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

[1] No procedural or jurisdictional issues were raised.

**Property Description:**

[2] The subject property is a free standing retail structure, formerly used as a Red Lobster Restaurant. The building size is 7,377 square feet. The structure is located on a parcel of land 18,837 square feet in size.

**Issues:**

[3] There was essentially only one issue involved in this complaint. The building experienced a fire in October 2011 and has remained vacant and unusable since that time. Both parties agreed that the fire damage had an impact on the market value of the property but disagreed on how to quantify the loss in value.

**Complainant's Requested Value: \$1,190,000.**

**Board's Decision: The complainant is allowed and the assessment is set at \$1,190,000.**

**Position of the Parties:**

**Complainant's Position:**

[3] The complainant argued that the fire had damaged the building to the extent that it was no longer reasonable to use the income approach or the direct comparison approach to estimate the value of the subject. The complainant felt that due to the current state of the structure the cost approach was the only suitable approach to use in the valuation of the subject.

[4] The complainant had completed a Cost Approach Estimate using a land value provided by the assessor, and added to that an estimated value for the existing improvements using the Marshall Swift Cost Manual.

**Respondent's Position:**

[5] The respondent argued that it was appropriate to use the income approach, to value the subject property as long as a negative adjustment was made to reflect the cost to restore the property to its' original condition.

[6] As a result of the fire, the landlord and the tenant entered into a "Lease Termination and Mutual Release Agreement". The purpose of this agreement was to terminate the lease and release each other from all obligations and liabilities arising from the fire and from all obligations and liabilities arising from the lease. This agreement took effect as of June 29 2012. As part of this agreement the tenant paid to the landlord an amount of \$1,800,000. \$946,261.60 of this total amount was allocated for demolition, salvage and restoration of the building.

[7] The respondent used this amount (\$946,261) to quantify a negative adjustment to be applied to the assessed value. In addition to this amount the respondent also made a positive adjustment of \$394,042 to the assessed value to account for rent paid by the tenant to the landlord as part of the "Lease Termination Agreement".

**Board's Reasons for Decision;**

[9] Since the fire occurred, numerous figures had been provided by various parties suggesting the amount of damage done by the fire and the cost to restore and/or demolish the property. The property owner had provided a fairly detailed summary of the cost to restore the structure, to both the complainant's agent and the assessor. That estimate totalled \$1,465,063.

[10] The Board found that the adjustments made to the assessed value by the assessor were based on figures agreed to by the parties as part of the "Lease Termination Agreement" and were not reflective of the typical real estate market and therefore would not produce an assessed value that would reflect the market value of the subject property based on the characteristics and physical condition of the property as of December 31 2012. The Board felt that by using a typical market rental rate of \$31.00 per square foot to estimate the value of the subject and then adding an additional \$394,042 to the assessed value to account for actual rent paid as part of the lease termination agreement, that the total rent used to calculate the assessment was in excess of typical market rent.

[11] The Board found that the respondent's approach did not adequately reflect; *the characteristics and physical condition of the property on December 31 2012.*

[12] The Board found that the complainant's cost approach more closely reflected the actual condition of the subject property as of December 31, 2012. The Board was satisfied that under the existing circumstances, this was the most reasonable approach

[13] Both parties provided the Board with numerous photographs of the interior and exterior of the subject property and the Board was assisted by these pictures in making its' decision.

DATED AT THE CITY OF CALGARY THIS 18<sup>th</sup> DAY OF July 2013.

  
R. Fegan  
Presiding Officer

**APPENDIX "A"**

**DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
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.*