



**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 InVal Property Tax Assessment Consulting)*

**COMPLAINANT**

and

**The City Of Calgary**

**RESPONDENT**

before:

**T. SHANDRO, PRESIDING OFFICER**

**J. RANKIN, BOARD MEMBER**

**A. ZINDLER, BOARD MEMBER**

This is a complaint to the Calgary Composite Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

**ROLL NUMBER: 044186609**

**LOCATION ADDRESS: 2227R Banff Trail NW**

**FILE NUMBER: 74229**

**ASSESSMENT: \$1,230,000**

This complaint was heard on July 2, 2014, at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- J. D. Sheridan, Agent, InVal Property Tax Assessment Consulting (“InVal”)

Appeared on behalf of the Respondent:

- N. Sunderji, Assessor, The City of Calgary

### **Procedural or Jurisdictional Matters**

[1] The only preliminary matter to note is regarding the agency for the Complainant. The Assessment Review Complaint Form (the “Complaint Form”) in this matter was executed by Mr. Sheridan under the name InVal, and the Complainant’s disclosure was provided under the letterhead of Linnell Taylor Assessment Strategies (“Linnell Taylor”). Mr. Sheridan appeared before the Board on several matters in the same week, under both Linnell Taylor and InVal. He was in the process of changing offices, and explained that there were reasons for appearing under one name or the other.

[2] In this matter, because the Complaint Form was sent to the Board under the name of InVal, it is this name which appears in the style of cause.

[3] The Board further notes that there is no question regarding Mr. Sheridan’s agency in this matter, pursuant to the Assessment Complaints Agent Authorization executed by the Complainant.

### **Property Description**

[4] The subject property is a servient, vacant land parcel located in the community of Banff Trail. With no direct road frontage, nor frontage on an alley, it is used exclusively for parking for four adjacent businesses, two hotels and two restaurants (the “dominant parcels”). It is separately titled from the dominant parcels.

[5] One of the restaurants on one of the dominant parcels is not operating at this time.

[6] In previous years the Respondent has assessed the subject property, and all similar parcels which are servient, separately-titled parking lots, as having a nominal value of \$1,000. The Board heard from the parties that the Respondent recently has changed its policy regarding these sites and is now assessing these parcels using the Respondent’s Land Value Rate (sometimes referred to by the parties as a Vacant Land Rate), which is a rate determined by the Respondent from analysing the sales of land-only parcels for different regions of the City of Calgary.

[7] The 2014 Assessment Explanation Supplement (the "AES") provided by the Respondent states that the "Valuation Approach" used by the Respondent was "Cost". At the hearing the Respondent advised this was a typographical error and that the subject property was in fact assessed using the Respondent's Land Value Rate. The AES does not actually state what amount was used by the Respondent for the Land Value Rate. It only states the resulting land value of \$1,231,676.

### Issues

[8] The Board identified the issue as follows:

1. Should a servient property which is separately titled parking be assessed using the Respondent's Land Value Rate?

### Complainant's Requested Value

[9] The Complainant requested a reduced assessment of \$1,000.

### Board's Decision

[10] The Board reduces the assessment of the subject property to \$1,000.

### Legislative Authority, Requirements and Considerations

[11] Section 293 of the Act requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
  - (a) apply the valuation and other standards set out in the regulations, and
  - (b) follow the procedures set out in the regulations.

[12] Section 4 of the *Matters Relating to Assessment and Taxation Regulation* ("MRAT") states:

- (1) The valuation standard for a parcel of land is
  - (a) market value, or
  - (b) if the parcel is used for farming operations, agricultural use value.

### Complainant's Position

[13] The Complainant advised the Board that the subject property was assessed historically at \$1,000 until 2013, at which time the Respondent sought to assess the subject property at \$1,090,000. In 2013 the Complainant applied to the Board and the assessment was reviewed. The Board reduced the assessment in 2013 to \$1,000 because Respondent's assessment did not reflect the characteristics and physical condition of the subject property as at December 31, 2012.

[14] The Complainant submitted that the same concern arises, that for 2014 the Respondent's assessment does not reflect the characteristics and physical condition of the subject property as at December 31, 2013.

[15] The Complainant further submitted that the Respondent was “double counting” the value of the subject property by assessing at a Land Value Rate but also assessing the dominant parcels using the Income Approach.

[16] The Complainant argued that the Respondent has erred in how it determined the highest and best use of the subject property, because the Respondent failed to consider that highest and best use must consider the legal permissibility for such use.

### **Respondent’s Position**

[17] The Respondent submitted that the easements on title for the subject property were all executed by the same party, and that the dominant parcels were all owned by the Complainant. Therefore, the Respondent argued, removing the easements from that title would and should be easy to accomplish.

[18] The Respondent further submitted that the assessed values of the dominant parcels do not in fact capture the value of the subject property.

[19] Using sales comparables and equity comparables, the Respondent argued that the assessed value of the subject property is fair and equitable and requested that the assessment be confirmed.

[20] The Respondent was asked about the Land Value Rate used. The Respondent’s disclosure included a table of rates used by the Respondent in various areas within the City, however none of these rates appeared to be the Land Value Rate used by the Respondent in this matter. The Board asked the Respondent what rate was used, and the Respondent was surprisingly unable to advise the Board what rate was used.

### **Reasons for Decision**

[21] Section 4 of MRAT requires parcels to be assessed using market value. The question however is whether the Respondent’s Land Value Rate reflects the market value of a servient parcel. The Board concludes that these rates can reflect the market value of such a parcel, but only if the dominant parcel(s) is/are also assessed with the same Land Value Rate. The dominant parcels in this matter, the restaurants and hotels, are not being assessed in such a manner, which leads the Board to conclude for the following reasons that the Land Value Rate is the incorrect method for assessing a servient, separately-titled parcel.

[22] First, the subject site has a number of encumbrances which would prohibit the development of the subject property or its sale. The Respondent argued that the easements could be easily removed from title for the subject property. However there was no evidence submitted to support this argument. From the information before the Board, it was determined that the encumbrances on title and the development permits of the dominant parcels would be significant barriers to the development of the subject property. Development of the subject property could result in at least three of the dominant parcels being in contravention of their development permits, which means they would lose its use, which would affect the market value of those parcels. Therefore the highest and best use of the subject property proposed by the Respondent is determined to not be legally permissible.

[23] Second, there is no evidence before the Board that such an approval for the development of the subject property could be approved by the City of Calgary within one year. Section 289 of the Act requires that the assessment for the subject property must reflect the

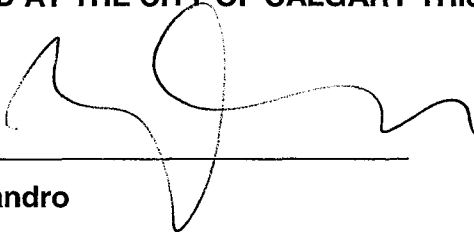
characteristics and physical conditions of the property on December 31 of the previous year. It is difficult for the Board to agree that a development permit, especially one facing significant questions about its legal permissibility, could be obtained within a given assessment year, and the Respondent provided no evidence to suggest that a development permit for the subject property could be obtained within a given assessment year. Therefore the Board concludes that the characteristics and physical conditions of subject property as at December 31 do not support the use of a Land Value Rate in assessing the subject property.

[24] Third, the value of a servient parcel is captured within the value of a dominant parcel if a dominant parcel is assessed using an Income Approach. In this case, it is because (a) the landlord and at least three of the tenants of the dominant parcels are in compliance with a development permit, and (b) patrons have places to park, that the tenants are able to operate and the landlord is able to execute leases for the dominant parcels. If not for the servient parcel, the landlord would not be able to execute a lease and receive income monthly for such a lease. By assessing the subject property at a Land Value Rate, and by not subtracting same from the market value of the dominant parcels, the Respondent is creating an issue of double counting the value of a property.

[25] The Respondent took the position that development of the subject property would not affect the market value of the dominant parcels, but insufficient evidence was before the Board to confirm this claim. From the information before the Board, we conclude that the market value of the dominant parcels would be affected.

[26] The Board therefore reduces the assessment value of the subject property to \$1,000.

DATED AT THE CITY OF CALGARY THIS 14<sup>th</sup> DAY OF August 2014.

  
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**T. Shandro**  
**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.*

**For Administrative Purposes Only**

<i>Property Type</i>	<i>Property Sub-Type</i>	<i>Issue</i>	<i>Sub-Issue</i>
<i>Retail</i>	<i>Vacant</i>	<i>Sales</i>	<i>Land Value</i>