

**CALGARY  
COMPOSITE ASSESSMENT REVIEW BOARD  
REVISED DECISION WITH REASONS**

In the matter of the complaint against the Property assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

**between:**

***Altus Group Ltd., COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***T. Helgeson, PRESIDING OFFICER***

***D. Julien, MEMBER***

***Y. Nesry, MEMBER***

This is a complaint to the Calgary Assessment Review Board 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: 091035303**

**LOCATION ADDRESS: 3700 Blackfoot Trail S.E.**

**HEARING NUMBER: 60321**

**ASSESSMENT: \$2,650,000**

This complaint was heard on the 16<sup>th</sup> day of September, 2010 at the office of the Assessment Review Board located at 4<sup>th</sup> Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- B. Neeson

Appeared on behalf of the Respondent:

- R. Luchak

**Property Description and Background:**

The subject property at 3700 Blackfoot Trail S.E. is an 83,100 square foot parcel of land used for parking. The subject property is zoned C-Cor3, the equivalent of I-2 under City of Calgary Land Use Bylaw 2P80. The subject property was originally assessed at \$750 for the 2010 tax year, but an amended assessment notice was issued on March 25<sup>th</sup>, 2010, which increased the assessment to \$2,650,000, or \$32 per square foot. A casino, the "Cash Casino" is located in a building on 4040 Blackfoot Trail, a property to the south of and adjacent to the subject.

**Issues:**

1. Do the words "characteristics and physical condition of the property" in s.289(2)(a) of the *Municipal Government Act* mean that an assessor must in all cases assess a property based on what it is being used for on December 31<sup>st</sup> of the assessment year, rather than at its highest and best use.
2. Is the subject property necessary to the lawful operation of the casino?

**What the Complainant said:**

The Complainant informed the panel that there is not enough parking on the site of the Cash Casino, and the subject parcel provides the extra parking needed. Cash Casino rents both the subject property and the floor space for the casino from Hampton Development Ltd. The parking on the subject property is necessary for Cash Casino to meet the requirements under AR 143/1996 (as amended), the *Gaming and Liquor Regulation*, the *Casino Terms and Conditions and Operating Guidelines* of the Alberta Gaming and Liquor Commission, and both City of Calgary Land Use Bylaws 2P80 and 1P2007. In effect, the subject property is a "subservient" parcel. The City's parking standard for casinos under Bylaw 2P80 was one stall per 2.3 seating spaces.

Decisions of the Municipal Government Board in 2008 and 2009 reduced the assessments of the subject property to nominal values of \$600 and \$750, respectively, based on its use as a parking lot. The Assessor has ignored s.289(2)(a) of the *Municipal Government Act* in assessing the subject property. He failed to take into account the "characteristics and physical condition" of the subject property on December 31<sup>st</sup> of the assessment year. It was a parking lot then, and it's a parking lot now. In 1999 Cash Casino renewed its lease for another five years. The Assessor has applied nominal assessments for many other "dependant" parcels used for parking. Why not the subject property?

**What the Assessor said:**

The subject property is vacant land. It has its own fee simple title, and there are no restrictions or caveats binding it to 4040 Blackfoot Trail, hence it could be sold. The sales approach to assessment means the two parcels stand alone. A decision of the Municipal Government Board confirmed the 2009 assessment at \$2,840,000. Off-site parking lots assessed at nominal value have a connection of some kind with the business that relies on them. If the subject property was brought down to nominal value, the value of 4040 Blackfoot Trail would have to increase.

**The Panel's Decisions on the Issues:***Issue 1.*

If s.289(2)(a) of the *Act* meant that all properties must be assessed based on what they were being used for on December 31<sup>st</sup> of the assessment year, assessors would have to ignore the development potential of those properties. It is this panel's view that the word "characteristics" in s.289(2)(a) requires the assessor to consider such factors as zoning, influence, location, and potential use. That does not mean that the resulting assessment will automatically reflect the highest and best use under the current zoning of a property. Other considerations apply, such as the likelihood that the property is capable of realizing its highest and best use within a reasonable period of time, or at all.

*Issue 2.*

Essentially, the subject property was assessed at highest and best use based on lack of evidence of a link or connection between the subject parcel and the casino at 4040 Blackfoot Trail. If the parking on the subject property is not necessary to the casino, the subject property could be sold without any deleterious effect on the casino. This panel is of the view that the requirement of a connection between the two properties must exist for the Complainant's argument to succeed, hence the second issue: *Is the subject property necessary to the lawful operation of the casino?* In other words, could the casino operate in compliance with the multitude of rules that govern its operation without the parking on the subject property?

Obviously no landlord with sound business sense would willingly do something that would jeopardize or damage a valued tenant, e.g., selling off the property which the tenant's customers rely on for parking. In such a case, the business relationship between landlord and tenant might be sufficient to support a finding that the property was unlikely to be sold, hence should be assessed as a parking lot, rather than at highest and best use.

Had substantive evidence been forthcoming to establish that the parking on the subject property was necessary for the casino to comply with applicable parking standards, then this panel might have concluded that the owner, Hampton Development Ltd., would be unlikely to part with the subject property, because to do so would make its tenant, the casino, a non-conforming use pursuant to the Land Use Bylaw, with serious implications for its continued operation.

Despite a plethora of information from the Complainant with respect to the legislation that governs the operation of casinos, including parking standards, the panel received no evidence as to the number of parking stalls *legally required* for the casino, other than "one stall per 2.3 seating spaces". The panel could have done the math, had it been provided with the number of seating spaces in the casino. Alternatively, a definitive answer might have been found in the development permit for the casino, but it wasn't put in evidence, either. A development permit for the parking lot on the subject parcel was mentioned; it might have been helpful, but it failed to materialize. Furthermore, there was

no evidence of a lease between the casino and Hampton Development Ltd. granting the casino exclusive use of the subject property for parking. Argument and assertion must be supported by substantive evidence.

### **The Panel's Decision on the Assessment**

It is the finding of this panel that the Complainant failed to establish that the parking on the subject property is necessary to the lawful operation of the casino. In fact, there is no substantive evidence that the subject property is necessary to the operation of the casino at all.

Without something that would anchor the subject property to the casino, the assessor rightly concluded that there was nothing to prevent the subject property from drifting off into the real estate market, so he assessed the subject property at what he considered its highest and best use. It is the decision of this panel that the assessment of the subject property be confirmed at \$2,650,000.

DATED AT THE CITY OF CALGARY THIS 16<sup>th</sup> DAY OF December 2010.



*for* **J. Helgeson**  
**Presiding Officer**

*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.*