

**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:

***Calgary Exhibition and Stampede Limited (as represented by AltusGroup),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, J. Kerrison
Board Member, D. Pollard***

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: 201202868

LOCATION ADDRESS: 421 - 12 Avenue SE

HEARING NUMBER: 66429

ASSESSMENT: 30,230,000

This complaint was heard on the 18 and 19 days of September, 2012, at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Six.

Appeared on behalf of the Complainant:

- A. Izard
- B. Brazzell

Appeared on behalf of the Respondent:

- E. Currie

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

- (1) There were no procedural or jurisdictional issues raised by either party.

Property Description:

(6) The subject is the Stampede Casino, located in the area commonly referred to as "Stampede Park" in the Victoria Park community of SE Calgary. The building is assessed as having 93,490 square feet (s.f.) plus parking structure. According to the Complainant, the building is 90,349 s.f. The date of construction is 2008. The sub-property use is shown as CS2100 Retail. The site area is 2.24 acres.

Issues / Appeal Objectives

(7) The property is currently being assessed using the cost approach. The Complainant disputes the valuation method, stating that the current assessment is not equitable with similar properties, and that the income approach more appropriately reflects the property's market value, and results in a more equitable assessment.

(8) The Board notes that the subject assessment increased from \$18,080,000 in 2011 to \$30,230,000 in 2012. In 2010, the assessment was \$44,410,000, which was ultimately reduced by the Composite Assessment Review Board. The current assessment calculates to \$323.35 per s.f.

Complainant's Requested Value: \$25,240,000

Evidence / Argument

(9) The Complainant argues that the subject is a retail structure that is readily adaptable to a number of alternative retail uses. It fails to meet the basic qualifications for "special purpose", and should therefore be valued on the basis of the income approach, similar to other retail properties throughout the City.

(10) In part, the Complainant's argument relies a number of related Court and Board decisions that contain a definition of special purpose buildings derived from a publication

entitled "Appraisal of Real Estate, Canadian Edition (1992)", wherein special purpose or limited use buildings are defined as being:

"...structures with unique designs, special construction materials, or lay-outs that restrict their utility to the use for which they were originally built. These structures have limited conversion potential..."

(11) The Complainant contends that the subject property does not have a unique design, nor does it incorporate any unique or special features or construction materials that would prevent it from being used for some other purpose. The Complainant also points out that the cost of removal of the existing tenant fixtures, and conversion of the interior to an alternate use would not be prohibitive. As an illustration, the Complainant referred the Board to the fact that a portion of the subject casino has been closed, and is now leased to Cowboys Nite Club, which is not a gaming establishment.

(12) The Complainant also pointed out that the Calgary Tower, which is arguably the most special purpose building in the City's central core, is assessed using the income approach to value.

(13) To further support his position, the Complainant offered five other Calgary gaming establishments, or former gaming establishments, that are not assessed on the cost approach. These are;

a. Calgary Casino; at 1420-Meridian Road NE. assessed on the Income approach. The assessment calculates to \$9,530,000, or \$162 per s.f. of building.

b. Deerfoot Inn and Casino; at 1000, 11500 - 35 Street SE, assessed as a full service hotel, based on the income approach at \$36,870,000, or \$169.79 per s.f. of building area.

c. Calgary Cash Casino; at 4040 - Blackfoot Trail SE, assessed on the sales comparison approach, at \$10,250,000, or \$70.69 per s.f. of building.

d. Five Star Bingo; at 4980 - 25 Street SE, assessed on the income approach, at \$220.00 per s.f. of building. This property was assessed as a "junior big box store" at a rental of \$17.00 per s.f. The assessment calculates to \$220.00 per s.f.

e. Rocky Mountain Honda (formerly Jackpot Bingo), assessed on the income approach, at \$3,760,000, or \$194.71 per s.f. of building.

(14) The Complainant referred to the Rocky Mountain Honda premises as an example of a gaming establishment that was readily converted to an alternate retail use.

(15) The fact that the subject is contained within a site designated DC Direct Control District in accordance with Bylaw 4Z2006 was also brought forward. The subject is located in Site one. Under schedule B Permitted Uses, a gaming establishment is one of 32 uses listed. Other permitted uses include a wide range of retail establishments, many of which are not entertainment related.

(16) The Complainant argues that the subject has more in common with the Class 'A' retail buildings throughout the City. For class 'A' supermarkets, the rental has been set by the City in the mass appraisal model at \$17.00. The City has established another class for Beltline supermarkets, at \$23.00 per s.f. This latter rate is based on the rental of one property, known as the Sunterra Market, which houses a boutique type grocery store, Espresso Bar, and a licensed lounge and restaurant.

(17) The other inputs adopted by the Complainant in the income approach calculations include a one per cent vacancy for the office portion, and ten per cent for the casino area, and a

7.25 per cent capitalization rate. These inputs were based on the inputs used by the City in the assessment of other restaurant, supermarket, and retail office space in the City. None of these inputs were challenged by the Respondent.

(18) In support of the current assessment, the Respondent submitted the cost approach calculations, to which the land value was added, to produce the total assessment amount of \$30,230,000. The cost calculations are based on the Marshal & Swift costing program. The Board notes that the depreciation applied is 3.4 per cent, for a building that is four years old. The source of the depreciation amount was not explained by the Respondent.

(19) In support of the cost valuation method, the Respondent submitted the "Casino Terms and Conditions and Operating Guidelines", set out by the Alberta Gaming and Liquor Commission (AGLC). This 92 page document sets out, among other things, the basic construction requirements for gaming facilities, security standards, and non-construction related requirements for a gaming licence in Alberta. It is the Respondent's position that these guidelines govern the special purpose features required in a casino building and qualify the building as special purpose.

(20) The Respondent also referred to the Elbow River Casino, which is assessed on the basis of cost. This building also contains the features required by the AGLC guidelines, and is consequently assessed on the basis of cost.

Board's Findings

(21) The Board notes that the same size discrepancy that currently exists between the Complainant and the Respondent, also existed in 2011. The source of the respective sizes adopted by either party was not presented for the Board's consideration, and this Board has no method of determining which is the most accurate. Therefore, in keeping with previous CARB decisions on this matter, this Board arbitrarily adopts 90,349 s.f. as the correct area.

(22) The Board finds the AGLC regulations to be interesting, but not probative of the Respondent's position. There are six other gaming establishments, or former gaming establishments, in evidence in these proceedings. All six of these would have had to comply with the AGLC building regulations in order to operate within the law in Alberta. So, in that respect, all of these premises were presumably similar. Yet, four of these are assessed on the basis of income, one is assessed on sales comparison, and only one is assessed by the cost approach.

(23) In the board's opinion, the subject does not fit the definition of a special purpose building as outlined in the Appraisal of Real Estate publication.

(24) This Board also considered the notion of fairness and equity. The Court, in *Stade v. Assessor #23 – Kamloops* had this to say;
"Questioning the relationship between assessment and the properties estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

(25) In *Dutchad Bil Investments Ltd. Et al v. Area 19* (2008 PAABBC 20081270) it states; *"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted 'consistency' as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that other similar properties are typically assessed below actual value, then the subject should receive this benefit too. This need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage".*

(26) In *Peard v. Assessor of Area #01*: *"The Assessment Act and common law require that assessments be equitable as between taxpayers. A Taxpayers land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two.....".*

(27) The apparent inequity in assessments is best illustrated as follows;

<u>Casino</u>	<u>Assessment Method</u>	<u>Assessment per s.f.</u>
Calgary Casino	Income	\$162
Deerfoot Inn	Income	\$170
Calgary Cash	Sales comparison	\$72
Five Star Bingo	Income	\$220
Subject	Cost	\$323

It seems reasonable to assume that each of the properties listed are subject to the same rules and construction guidelines under the AGLC regulations. The assessment of the subject is over twice the median of the other four. It is difficult for this Board to understand why the subject is treated as a special purpose building, while the others are not.

(28) As for the premise that income capitalization is the preferred method of valuation, this Board will not identify a preference as to which valuation approach should be used to determine the assessed value of any property. It is the value that this Board is authorized to adjudicate. If any party can satisfy the Board, to the extent required by law, that in application of any applied approach to value errors have been made that have resulted in an incorrect assessed value, then it is those errors, supported by market based evidence, that should be given consideration. That is not to say that an alternative method of valuation cannot be applied. However, any alternative method must be as equally well founded in market evidence as the method already being employed.

(28) In this instance, the Board is of the opinion that the subject is a limited market property for which a market for users other than gaming establishments exists. That fact has already been demonstrated with the lease of a portion of the space to Cowboys Nite Club. That space, or any other portion of the casino, could just as easily have been leased to a supermarket, or any of a variety of uses permitted in the Land Use Bylaw. The cost method is not the only method of valuation, and the income valuation method is equally valid. The remaining question is which method, in this instance, produces the most credible result.

(29) The Board is of the opinion that the cost method applied by the Respondent does not result in an assessment that is fair and equitable with similar properties. The Board cannot

rationalize the over 100 per cent variation between the subject assessment, and the assessment of similar, competing casino properties.

(30) The Board also finds that the cost calculations employed by the Respondent have little foundation in the marketplace. Particularly, there is no support for the depreciation applied. No market sales or equity comparables were produced that would lead this Board or any reasonable individual to a similar conclusion as the Respondent's cost result.

(31) The Complainant's income approach inputs are market derived. By reason of the location, and - to a lesser extent - the perceived building quality, the Board finds that the rent being achieved in the Sunterra Market is the most comparable indicator of the subject that is currently available in the Calgary Market. The Complainant's other calculation inputs were not challenged by the City, and the Board therefore accepts them as presented.

Board's Decision

(32) The assessment is reduced to \$25,240,000.00.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF October, 2012.



Jerry Zezulka
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1.	C1 Evidence Submission of the Complainant
2.	C2 Evidence for Gaming Establishments, submitted by the Complainant
3.	C3 Complainant Beltline Land Analysis
4.	C4 Rebuttal Submission of the Complainant
5.	C5 Cost Approach submission of the Complainant
6.	R1 Evidence Submission of the Respondent

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.

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Decision No. 1828/2012 - P			Roll No. 201202868	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Casino	Special purpose	Cost v Income	Valuation method, Equity