

**COMPOSITE
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:

Stampede Casino (GP) Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
D. Cochrane, MEMBER
R. Deschane, MEMBER***

This is a complaint to the *Composite Assessment Review Board* (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER: 201202868

LOCATION ADDRESS: 421 – 12 Avenue SE

HEARING NUMBER: 63050

ASSESSMENT: \$44,410,000.

This complaint was heard on 30th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4. The Hearing was concluded September 2, 2011 at the same address, in Boardroom 6.

Appeared on behalf of the Complainant:

- A. Izard
- R. Brazell

Appeared on behalf of the Respondent:

- D. Sartoor

Preliminary Matters:

This Hearing was originally scheduled to be heard August 18/11; however, time constraints required that the Hearing be post-phoned until this date. The Respondent objected to what they consider new evidence which was submitted by the Complainant for this Hearing. The Complainant contends that the evidence in question was submitted to the Assessor within the time frame required by the *Matters Relating to Assessment Complaints Regulation (MRAC) Alberta Regulation 310/2009* for this Hearing date and, accordingly the information has been properly exchanged between the two parties.

Board Decision – Preliminary Matter(s):

The CARB made the determination that the original Hearing had been postponed and that no new exchange dates had been set for the incorporation of additional evidence. The CARB is of the viewpoint that this postponement is no different than a one (1) or two (2) hour postponement that may have been required under different circumstances, and in that case there would be no opportunity to advance additional or new evidence. Accordingly it is the decision of the CARB that the additional or new evidence submitted by the Complainant will not be accepted into evidence for the purposes of this Hearing.

Property Description:

The subject property is commonly referred to as the Stampede Casino. As the name implies, the property is located within Stampede Park, in the Victoria Park community of southeast Calgary. It is a 93,490 Sq. ft. facility that incorporates a main floor area of 49,130 Sq. Ft., an upper level of 22,180 Sq. Ft. and an office component of 22,180 Sq. Ft. The property was reportedly purpose built for use as a Casino in 2008 and its use as a casino has not changed since.

Issues:

There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The methodology applied by the Assessor has unfairly assessed the subject property as being a "special purpose property" and has, accordingly, derived an assessed value through application of the Cost Approach. The Complainant maintains that the property should be valued through application of the Income Approach as other casino properties in Calgary have been assessed and as the subject property was assessed in the past.
2. In applying the Cost Approach the Assessor has erred in that certain parameters, such as area, are incorrect and need to be revised as some areas have been incorrectly included twice.

Complainant's Requested Value: \$15,370,000. or alternatively \$18,080,000. (revised at Hearing)

Party Positions:**Complainant's Position**

The Complainant has valued the subject property through application of the Income Approach to Value and maintains that same is the best method of valuation to be used in this instance. The Complainant's requested value of \$15,370,000 (Exhibit C-2A pg. 26) is based upon their application of the Income Approach; however, they have also derived an alternative (Exhibit C-2A pg. 28) request of \$18,080,000 also derived through application of the Income Approach but using a different rental rate to the main casino space.

The Complainant maintains that the subject property is not a "special purpose property" requiring application of the Cost Approach as has been done by the Assessor. The Complainant pointed out (Exhibit C-1 pg. 7) that last year (2010) the subject property was assessed using the income approach, meaning the property was not considered to be "special purpose", and that the assessed value was approximately \$14 million less than the current assessment. In support of their contention that the subject property is not a special purpose property, the Complainant introduced (Exhibit C-2A pg. 6) a definition derived from the 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 properties have limited conversion potential..."

The contention of the Complainant is that the subject property does not have a particularly unique design, does not incorporate special construction materials nor does it have a particularly unique lay-out that would prevent it from being used for some other purpose other than a casino. The Complainant pointed out to the CARB that most of the interior improvements required for the operation as a casino are in fact tenant improvements. If these improvements were to be removed, the remaining shell could easily be adapted to a variety of uses. The Complainant stressed that the subject property does not meet the definition of a "special purpose or limited use building" and it should be valued through application of the Income Approach, as it has been valued in the past. The Complainant pointed out that the Calgary Tower, which could certainly qualify as being a 'special purpose property', has been valued by the Assessor for assessment purposes using the income approach.

The Complainant also introduced (Exhibit C-1 pgs. 191 – 197) a copy of the Land Use Bylaw Amendment LOC2005-0057, Bylaw 4Z2006, which guides the land use(s) for the site underlying the subject improvements. Schedule B of the said Bylaw states, under the heading Purpose

"...to integrate a range of compatible uses that include open space, entertainment, gaming, education, interpretative, exhibition, agricultural and viable commercial facilities; and..."

In providing this information the Complainant stressed that other options are available for the development of the subject site, it is not restricted to a single use as a casino site. The Complainant went on to suggest that the subject property could function well in a variety of uses other than that of a casino. These suggested uses included warehouse space, a grocery market and/or retail sales.

The Complainant based their income approach on in puts applied to other types of properties, in this case both retail (grocery) stores and/or office properties that are of a similar size category as the subject. The Complainant produced two different income approach analyses; one of which (Exhibit C-2A pg. 26) is based upon using a lease rate of \$14/Sq. Ft. being the lease rate utilized by the Assessor for 'big box' type retail stores in the 50,000 to 100,000 Sq. Ft. size range and also being the rate utilized by the Assessor to prepare the assessed value of the Casino ABS at 1420 – Meridian Rd. NE; the second income analysis is based upon using a rental rate of \$17/Sq. Ft. being the Assessor's rate used for the valuation of Jr. 'big box' stores in the 14,000 to 50,000 Sq. Ft. size range as well as being the Assessor's rate applied to well located grocery stores. The Complainant also indicated that this latter rate of \$17/Sq. Ft. has been utilized by the Assessor in preparation of the assessed value of the Five Star Bingo located at 4980 – 25th Street SE. The Complainant supported the applied rates with several comparables (Exhibit C-1 pgs. 202 – 206). The Complainant utilized a capitalization rate of 7.50% which is the same rate utilized by the Assessor in valuing other Calgary casinos where the income approach has been employed.

Respondent's Position

The Assessor maintains that the method of valuation is not a valid basis for bringing forward a complaint and introduced (Exhibit R-1 pgs.74 – 77) CARB Decision 0638/2010-P (authored by this Presiding Officer) which clearly states that the CARB will not make a determination as to which valuation method should or should not be used in any particular case, it is the final value that is the subject of adjudication, regardless of how that value was derived.

The Assessor maintains that the subject property is indeed a 'special purpose property' as it was 'purpose built' and it has been used for no other purpose since its original construction other than as a casino. Under these circumstances it is appropriate for the Assessor to employ the Cost Approach to value the subject property and they believe that they have done so correctly.

In applying the Cost Approach the Assessor does not agree with the Complainant that an error has been made in terms of the correct area and supported this contention with an excerpt (R-1 pg. 32) from the *Marshall & Swift Commercial Estimator* software that outlines the correct manner to determine the area in question and accordingly the Assessor has correctly calculated this area.

Complainant's Rebuttal:

The Complainant introduced their Rebuttal, which amounted to some 400 pages, in three separate but contiguous briefs (Exhibits C-2A, C-2B & C-2C), which for the most part contains further definitions relating to "special purpose properties" and "actual value" as well as extracts from the Land Use Bylaw and copies of various court and/or CARB decisions.

The Complainant provided (Exhibit C-2A pg. 21) an analysis that indicated that if the subject property were to be valued through application of the income approach, it would require a rental rate of approximately \$46/Sq. Ft. to derive a value equal to the assessed value of the property. The foregoing assumes all other in-puts remain constant.

Board's Decision:

The assessment is **reduced** to: **\$18,080,000.**

Decision Reasons:

The CARB finds it very frustrating when parties come before the Board with size arguments as there is no way, short of re-measuring the property, for the CARB to determine what the correct size is. In the case before us the Complainant maintains that the subject property contains a gross area of 90,349 Sq. Ft. (Exhibit C-2A pg. 28) while the Respondent maintains that the correct size is 93,490 Sq. Ft. (Exhibit R-1 pg.25). For the purposes of this decision, and based largely upon the information presented in Exhibit R-1 pg. 34, the CARB will utilize an area of 90,349 Sq. Ft.

The first issue the CARB had to deal with was if the subject property is a special purpose property or is it not. The CARB finds that the subject property does not meet the requirements of "special purpose properties" in that it could easily be adapted for any of several different uses once the existing tenant improvements were removed. Additionally, the CARB was mystified as to how the subject property was not considered to be a special purpose property for the 2010 assessment year as it was valued using the income approach, but for the 2011 assessment year the situation appears to have changed with no explanation. Surely if a property is deemed to be a special purpose property in one year, then if no changes are made to the property it must remain special purpose for the ensuing years. Obviously the converse also applies. The CARB is further concerned that by making the change to categorize the property as being "special purpose" and thus applying the Cost Approach as a basis for the valuation, the assessed value has increased by some \$14 million dollars in an economic environment that would not seem to support such a conclusion.

Having determined that the subject property is **not** a special purpose property, the CARB accepts that the valuation of the property can be determined through application of the Income Approach. The Complainant has gone to great lengths to provide what they maintain are supported value estimates (Exhibit C-2A pgs. 26 & 28) derived through their application of the Income Approach. It is difficult for the CARB when the parties disagree as to the assessed value of a property but each party has prepared an analysis using a different method of valuation. In the case before us the Respondent based their estimate on a value derived through application of the Cost Approach while the Complainant has prepared their value estimate based upon the Income Approach. As a result of the foregoing the CARB has little common ground for comparing the two value estimates, instead it becomes a matter of reasonableness, or what would a reasonable person do or consider in this situation. *Black's Law Dictionary, Seventh Edition* defines a reasonable person as:

"The reasonable man connotes a person whose notions and standards of behaviour and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows his emotions to overbear his reason and whose habits are moderate and whose disposition is equable. He is not necessarily the same as the average man – a term which implies an amalgamation of counter-balancing extremes" R.F.V. Heuston, Salmon on the Law of Torts 56 (17th ed. 1977)

There is no question that the subject property is somewhat unique in that it is a member of a very small category of properties, in this case casinos, and there is little in the way of typical in-

puts that can be utilized for application of the Income Approach; however, that situation was the same in the previous assessment year when the Assessor was able to derive sufficient relevant information to successfully apply the Income Approach. As a result of the small universe of properties from which to draw in-puts, it is, in the judgment of the CARB, reasonable to derive such in-puts from a somewhat different class of properties and this is what the Complainant has done. Arguments over what constitutes an acceptable class of properties from which to derive the said in-puts can be seemingly endless so the CARB again looks to the notion of the 'reasonable person'. It is, in the judgement of the CARB, reasonable to derive such inputs from retail properties of a similar size as the subject and/or commercial/office properties competing in the same or a similar market place.

The Complainant provided an analysis (Exhibit C-2A pg. 21) which shows that if the subject property were to be valued through application of the income approach, it would require a rental rate of approximately \$46/Sq. Ft. to derive a value equal to the assessed value of the property. The foregoing assumes all other in-puts remain constant. Based upon all of the information provided by both parties the CARB concludes that \$46/Sq. Ft. is, in this case, completely unrealistic and unachievable in the current market and it does raise a doubt as to the accuracy of the current assessed value of the subject property.

The Complainant provided (Exhibit C-1 pgs. 180 – 187) information pertaining to the assessments of five (5) gaming establishments (one having been converted from a bingo hall to a retail venture) which shows the assessments equating to a range from \$62/Sq. Ft. of assessed building area to \$221/Sq. Ft. The property assessed at \$62/Sq. Ft. appears to be an anomaly as it is far removed from the rate/Sq. Ft. indicated by the other properties and has therefore been removed from consideration. In consideration of the foregoing the four remaining properties reflect a range of \$149/Sq. Ft. to \$221/Sq. Ft. Indicating a mean of \$186.25/Sq. Ft. and a median of \$187.50/Sq. Ft. The current assessment of the subject equates to approximately \$475/Sq. Ft. and this does not seem equitable to the CARB. The Complainant has put forward two value options (based upon differing lease rates) for the CARB to consider one of which equates to a rate of approximately \$170/Sq. Ft. while the other equates to a rate of approximately \$200/Sq. Ft., both within the aforementioned range of other gaming establishments. The CARB is of the judgement that the subject property is more representative of the higher end of the value range given the newness of the property and the fact that it offers underground parking facilities on site. Accordingly the CARB finds the assessed value of the subject property to be in the range of \$200/Sq. Ft. and the assessment is reduced accordingly.

DATED AT THE CITY OF CALGARY THIS 22nd DAY OF Sept. 2011.


C.J. Griffin,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2A	Complainant's Rebuttal Presented in three (3) parts (C-2A, C-2B & C-2C)
3. 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.*