

**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:

Elbow River Holdings Inc. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

Y. Nesry, MEMBER

D. Pollard, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	079 124 129
LOCATION ADDRESS:	1810 – 1 Street SE, Calgary AB
HEARING NUMBER:	63278
ASSESSMENT:	\$2,750,000

This complaint was heard on the 28th day of September, 2011 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *S. Sweeney-Cooper (Altus Group)*

Appeared on behalf of the Respondent:

- *E. Currie (Assessment Business Unit)*

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

There were no procedural or jurisdictional matters to be decided by the Board.

Property Description:

The property that is the subject of this complaint is a 14,133 square foot lot that is a part of the parking area for the Elbow River Casino which occupies most of the block south side of 17 Avenue between Macleod Trail and 1 Street SE in the Beltline district of Calgary. This lot is south of 18 Avenue SE.

The 2011 assessment is \$2,750,000 (\$194.58 per square foot). The base land assessment rate for this BL8 market zone is \$195 per square foot.

Issues:

The Assessment Review Board Complaint form filed March 7, 2011 had check marks in boxes 3 (Assessment amount), 4 (Assessment class) and 9 (whether the property is assessable) in Section 4. For Section 5 – Reasons For Complaint, an attachment listed several points relating to the assessability, highest and best use and valuation of the land.

At the hearing the Complainant argued that the property should be given a nominal assessment because it is legally and contractually required that the land be utilized as a parking lot for the casino. If the Board finds that the land should be assessed at market value, the land rate applied is too high.

Issue: "Should the land be assessed at a nominal value?"

Issue: "If the land is assessable at market value, what is the correct value?"

Complainant's Requested Value: \$750 (the nominal value applied to other properties under extraordinary circumstances such as those impacting this land).

If the land is assessable at market value, the value should be reduced to \$175 per square foot or \$2,470,000.

Party Positions on the Issues:**Complainant's Position:**

"Should the land be assessed at a nominal value?"

For at least three assessment years prior to 2011, the Respondent recognized the special circumstances surrounding this property and assessed it at a nominal value. Now, for 2011, the assessment has been increased to full market value.

The land use for the subject lot is set by Direct Control Bylaw 83Z2001. That bylaw applies to the subject lot as well as to a portion of the block now improved with the casino building. A copy of the bylaw is in the Complainant's evidence. It references DC Bylaw 103Z2000 which apparently was the municipal approval for development of the casino.

Bylaw 83Z2001, under Land Use, states *"the Permitted and Discretionary Uses of the C-3 General Commercial District of Bylaw 2P80 shall be the Permitted and Discretionary Uses respectively with the additional Discretionary Use of a Gaming establishment – casino and parking, both in conjunction only with the gaming establishment casino in Bylaw 103Z2000"*. One of the Development Guidelines in the Bylaw states that *"Parking stalls shall be provided at a minimum ratio of 1 stall per 2.3 gaming positions for use by the gaming establishment-casino with the exact number of stalls to be determined to the satisfaction of the Approving Authority prior to the issuance of the development permit."*

The Certificate of Title for the subject property was presented by the Complainant. Registered on that title was Caveat 881 220 407, registered on December 1, 1988 pertaining to a Development Agreement with The City of Calgary. The caveat is contained in Complainant's evidence.

The subject land is restricted in that it can only provide parking to cover the deficiency in parking on the casino site. This land could not be developed for any use other than as a parking lot. The casino is assessed at market value and that value pertains to the casino and all land that is necessary in accordance with municipal approvals for the casino. Since the subject land is a required parking lot for the casino, its value is captured in the market value assessment of the casino. For that reason, this land should be assigned only a nominal assessment of \$750 which is the current rate for lands of this type in this market area.

"If the land is assessable at market value, what is the correct value?"

A City of Calgary Floodway/Flood Fringe map in the Complainant's evidence shows an area adjacent to the Elbow River that is affected by potential for flooding. The subject property is shown on that map. Other properties in a floodway/flood fringe receive an adjustment to their assessments. There is no adjustment made to the subject assessment.

A table setting out details of nine sales of land indicates land prices from \$116.42 to \$221.57 per square foot of land area with a median of \$172.75 and an average of \$172.97. The sales occurred between the dates of January 2009 and January 2011. Three of the sales occurred after the valuation date of July 1, 2010. Based on this sales data, the subject land, if assessable at market value, should be reduced to a rate of \$175 per acre.

Respondent's Position:

"Should the land be assessed at a nominal value?"

There is another parking lot (219 – 18 Avenue SE) that provides the parking stalls that are deficient on the casino site. That lot is assigned a nominal assessment of \$750. When the casino was approved for development (DP 2330-2822) it was determined that 370 parking stalls were required but only 359 stalls were in the parkade under the casino. Of those 359 stalls, 11 were deficient in depth or width. Development plans showed 15 at grade stalls but these were in areas of required landscaping. It would be necessary to cover the parking deficiency on another property and that deficiency is more than adequately covered by 82 stalls on the parking lot at 219 – 18 Street SE. 219 – 18 Street SE is located directly across 18 Avenue from the casino. The subject is located immediately south of 219 – 18 Avenue SE. 219 – 18 Avenue SE receives the nominal \$750 assessment.

The caveat on the subject property title was registered in 1988 but the casino was not built until sometime in 2004-2005. Its validity is therefore questionable.

The casino is assessed using the cost approach with the land valued at \$1,377,940 and improvements at \$14,805,751.

"If the land is assessable at market value, what is the correct value?"

Having regard to the sales in evidence from the Complainant, the Respondent argues that they are not sales that can be relied upon for assessing Beltline land such as the subject. One of the sales is in downtown and not Beltline. Three of the sales occurred after the effective valuation date of July 1, 2010. Four of the sales were court ordered or mortgage foreclosure sales which do not meet the market value definition which includes the statement "willing seller to a willing buyer." One sale was to the owner of adjacent lands which prompted the remark from an agent involved that the price did not necessarily represent market value. One sale was a transaction wherein the City of Calgary traded land with a developer – this was not an open market sale. That left just one sale at \$205 per square foot that supported the assessment base rate of \$195 per square foot.

A number of Calgary CARB decisions were presented to show that the Beltline base land rate was confirmed on other lands.

Board's Decision:

The assessment is confirmed at \$2,750,000.

Reasons for the Decision:

The Board finds that the caveat referred to by the Complainant is not related to the Elbow River Casino between 17 and 18 Avenues and Macleod Trail and 1 Street SE. When that caveat was registered to the subject property title, there was a development application made to construct a new casino on the site of the Elbow River Hotel which is south of the subject lot, adjacent to the

Elbow River. That casino was never built. Years later, the casino owner assembled the land that is the site of the existing casino and applied for and received a development permit for that development. There is nothing in evidence that says the subject land is restricted for parking for the existing casino.

Direct Control Bylaw 83Z2001 pertains to the subject lot and to a portion of the existing casino site. The Bylaw states that a discretionary use for the site is for parking for the casino. That use relates to a gaming establishment casino which is apparently a permitted or discretionary use under another DC Bylaw (103Z2000). That Bylaw was not included in any of the evidence before this Board. If it had been it might have told the Board of any ties between the subject lot and the casino. Without that bylaw, it is not possible to ascertain whether the subject lot is legally required for parking for the casino that was built on 17/18 Avenue SE.


The casino property is assessed using the cost approach. The land under the casino is assessed at market value and the depreciated cost of the building and other improvements is added. The land value is for the casino land and no other.

The Board finds that the deficiency in parking for the casino is satisfied by the parking stalls on the property at 219 – 18 Avenue SE.

In conclusion, there is nothing in evidence that ties the subject parking lot to the existing Elbow River Casino at 17-18 Avenue between Macleod Trail and 1 Street SE.

With respect to land value, the Board finds that the Complainant's "comparable" property sales are unreliable as an indicator of market value. The Respondent's observation of circumstances surrounding the majority of those sales makes it clear that they were not reliable as comparables for valuing the subject land. The Sales in evidence from the Respondent provide the best indicator of market value.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF November 2011.



W. Kipp
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 Use:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	other	Vacant Land	Sales approach	Land comparables