

**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 Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***T. Golden. PRESIDING OFFICER
R. Deschaine MEMBER
E. Reuther. 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 2012 Assessment Roll as follows:

ROLL NUMBER	200374908
LOCATION ADDRESS	218 18 AV SE
FILE NUMBER	68472
ASSESSMENT	\$26,430,000.00

This complaint was heard on 31 day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *K. Fong,*
- *A. Izard*

Appeared on behalf of the Respondent:

- *R. Natyshen*

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

[1] The Respondent objected to the rebuttal document submitted by Complainant. The rebuttal document, in their opinion contains new information in the form of an additional comparable and more photos of the comparables.

[2] The Complainant disagreed with the statement that the rebuttal was new information. Rather the rebuttal is a response to the Respondent's evidence questioning a main argument of the Complainant the specialty nature of the structure.

[3] The Board considered the presentations and reserved the decision on the validity of portions of the rebuttal document until the merit evidence was presented at which time the role of the rebuttal evidence could be determined.

[4] After hearing the merit of the complaint, the Board decided that the Complainant's rebuttal evidence could be entered as evidence. In the Boards opinion the specialty nature of the structure is a central argument and the rebuttal addresses that argument

Property Description:

[5] The subject property is a 77,681 square foot (sq ft) commercial building constructed in 2005 located on a 1.54 acre parcel at 218-18 AV SW. The use of the structure is a casino known as the Elbow Casino. Although the casino has underground parking, additional land adjacent to the subject is also used for parking. The assessment was conducted using the Cost Approach method to valuation.

Issues:

[6] Does the Cost Approach provide the appropriate estimate of the market value for the subject property?

Complainant's Requested Value: \$21,470,000.00

Board's Decision in Respect of Each Matter or Issue:

[7] The Complainant indicated to the Board that the Cost Approach to valuing a property was used for evaluating specialized structures that may have few or no similar buildings in the Municipality. This opinion was supported by using an excerpt from a City of Edmonton Assessment Policy Manual, pgs 21 to 25 C1. The Complainant went on to explain that the subject property is not a specialty structure and there are more appropriate methods available to estimate value. As an indicator of how inappropriate the Cost method is the Complainant indicated to the board that the assessed value required a rent rate of \$29.00 sq ft. This rate is significantly higher than either A class office, commercial retail uses in the Beltline or big box stores in the City.

[8] A series of decisions and court cases were referred to in support of the Board considering the accuracy and fairness of an assessment.

[9] The Complainant described the features of the subject indicating that the structure is not unlike any other commercial retail structure. The structure is built with standard building panels and has no internal obstructions that may restrict other retail users who may lease the subject should the casino fail. The subject has sufficient parking for other retail uses as well as a loading dock. The requirements of the Alberta Gaming and Liquor Commission Casino Facility Licensee Requirements have little impact on the structure of the facility. Although the subject was built as a casino, other structures such as industrial warehouses have been converted into casino uses. Most of the requirements are procedural and not structural.

[10] Given that the subject is a retail building the value is better derived using either the sales approach or the Income Approach. Insufficient sales are available to use the Direct Sales approach suggesting the best method to develop an assessment is the Income Approach. Given that other casinos outside the downtown are assessed using the Income Approach the Complainant prepared a value using the income approach. The Income Approach was supported by a recalculated Cost Approach.

[11] The Complainant argues that the subject is a Beltline area retail structure and presented a series of Beltline lease rates of approximately \$17.00 per sq ft. Understanding the subject is a high quality structure the Sunterra Market was deemed to be the best comparable by the Complainant. The Sunterra lease rate is \$23.00 per sq ft. which is used in the income calculation. Other income factors were taken from the City Beltline income calculations with the exception of the casino vacancy rate which was changed from 10% typical retail vacancy allowance assessed to 1%. This calculation resulted in the requested assessment.

[12] In order to support the requested assessment the Complainant questioned the Respondent's cost calculation. In the Complainants opinion the improper factors were used for depreciation date, and the restricted height of the parkade inflated the value. More importantly the calculation should use a retail use rather than a casino use as this structure although used as a casino, is constructed as a retail building. The revised cost approach yielded a value of \$22,800,000, close to the requested value.

[13] The Respondent's position is that the subject property was purpose built to accommodate a casino and had to comply with the requirements of the Alberta Gaming and Liquor Commission, making it a specialized structure. As a special structure the Cost Approach was appropriate for this property. Once the decision was made to use the Cost Approach, the calculation is conducted by a qualified person using the Marshal and Swift costing program. The Respondent was unable to answer specific questions regarding the detail of the calculation.

Reviewing the requirements of the Alberta Gaming and Liquor Commission Casino Facility Licensee Requirements the respondent pointed out the requirements necessary for a casino. In particular there were needs for security and special sound and camera systems. The Respondent said this would result in electric service and heating and air conditioning superior to most retail uses.

[14] In addition to the special nature of the building, the Respondent said there was a lack of comparables in the downtown area requiring both downtown casinos to be assessed on the Cost Approach.

[15] The assessment of a property must represent market value and the Cost Approach was found to have resulted in a value that would require a market lease rate that, from the evidence, is not attainable in the Beltline area of the City.

[16] The Board is of the opinion that the structure is not constructed in any significant way different from a similar sized retail structure. Licensing requirements are largely procedural with the exception of minor interior requirements. In the opinion of the Board the subject is not limited to future gaming uses rather a variety of retail uses may be accommodated. Zoning is also not a limitation.

[17] The rent needed to be achieved and the nature of the subject brings the assessment of the subject into question and casts doubt on the approach used to develop the assessment. The Board agrees with the Complainant that another method of valuation is more appropriate. It is noted that outside the downtown other casinos are assessed using the Income Approach and there were no casino or retail sales presented to support a Direct Sales Comparison Approach.

[18] The Board agrees with the Complainant that the cost approach does not result in a fair or equitable assessment. The best alternate approach available is the Income Approach and since the Board does not view the structure as different from similar sized retail uses, the factors to be used in the calculation would be similar to other Beltline factors. The Sunterra Market is a reasonable comparable as it is agreed that it is a high end retail use. Using a \$23.00 rental rate results in a market value of \$21,470,000.00.

Board's Decision:

[19] The assessment is reduced to \$21,470,000.00

DATED AT THE CITY OF CALGARY THIS 13 DAY OF November 2012.



Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Evidence Appendix
3. C3	Complainant Evidence Appendix
4. C4	Complainant Reference Appendix
5. C5	Complainant Argument Document
6. C6	Complainant Rebuttal part 1
7. C7	Complainant Rebuttal part 2
8. C8	Complainant Rebuttal part 3
9. 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.*

Appeal Type	Property Type		Issue	Sub-Issue
CARB	retail	Casino	Cost approach	income method