

**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(4).

between:

AEC International Inc., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

P. Pask, MEMBER

J. Rankin, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board in respect of a Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	123191900
LOCATION ADDRESS:	9650 MACLEOD TRAIL S.E.
HEARING NUMBER:	58641
ASSESSMENT:	\$14,540,000

This complaint was heard on the 6th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- L. Shimek, AEC International
On behalf of the Owner: 773336 Alberta Ltd.

Appeared on behalf of the Respondent:

- B. Duban, City of Calgary

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

Initially the parties advised that there were no procedural or jurisdictional issues. However, prior to summary comments, the Respondent referred to two documents submitted by the Complainant that had been marked as "LATE" by the Assessment Review Board. The Complainant's document "Rebuttal Appendix 2 – MGB Decision Notices" was submitted to the Assessment Review Board on June 30, 2010 and the Complainant's document "Rebuttal Appendix 6 – lease information" was sent on June 29, 2010. Pursuant to M.R.A.C. s.8, both documents were due by Jun 28, 2010.

The Board determined that Rebuttal Appendix 2 was simply a compilation of Municipal Government Board Notices of Decision which had, for the most part, been referenced by either the Complainant or the Respondent in their presentations. The Board accepted this document as reference material only.

The Board determined that Rebuttal Appendix 6 – lease information contained, in part, new information on Industrial leases which the Respondent had not had an opportunity to review. In addition to being submitted late, it was sent just prior to a Statutory Holiday thus further limiting the opportunity for review. The Board did not accept this document into evidence.

Property Description:

The property is a Wal-Mart store located at the intersection of Macleod Trail and Southland Drive. It is characterized as being a Class B big box store encompassing 126,719 square feet which was constructed in 1966. The City of Calgary has assessed the property using a rental rate of \$10 per sq.ft.

Issues:

A number of issues were identified on the complaint form. The complainant now agrees that non-recoverable operating costs, vacancy rate, vacancy rate shortfall and cap rates are correct and are no longer matters of complaint.

The remaining issue is, having regard to market value and equity, what is the correct rental rate?

Complainant's Requested Value: \$11,530,000 based on \$8.00/sq.ft. rental rate.

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

The appropriate market value rental rate is \$8.00 per sq.ft. resulting in a total assessment of \$11,530,000.

Board's Decision:

The Complainant identified ten big box comparables of which six are located in Calgary, one in Lethbridge, two in Edmonton and one in St. Albert, Alberta. They range in size from 96,132 sq.ft. to 193,115 sq.ft and vary in age from new to a renovated 43 year old structure with lease dates starting as early as 1996 and extending to 2006. Rental rates on these comparables have an average lease rate of \$7.63/sq.ft. and a median rate of \$7.89/sq.ft. prior to any discounting of inducements for architectural expenses and free rent. The relevant lease rates after these have been considered are \$7.60 and \$7.88 respectively. The lease for the subject property was renewed in 2007 for a five year term at a base rate of \$1.62 per sq.ft. plus a percentage of sales. The effective rent of the subject property in 2009 was \$7.15 per sq.ft.

In support of the lease table noted above, the Complainant documented the sale of a vacant big box store in Edmonton on January 15, 2008. Using the City of Edmonton's assessment parameters, the Complainant demonstrated that the property would generate a lease rate of \$8.29 sq.ft.

In support of equity, the Complainant also referenced the City's assessment of three similar properties all with higher classifications: two at B+ and one at A2. These were assessed at \$8.00 and \$7.00 per sq.ft. respectively.

The Respondent identified eight leases with rental rates ranging from \$8.00 to \$15.27/sq.ft. They range in size from 72,053 sq.ft. to 132,228 sq.ft. and have leases starting in 1999 through to 2009 with terms ranging from 5 to 20 years. There was no evidence presented that indicated that the specific leases were reviewed beyond the Assessment Requests for Information responses and no analysis was presented to show what, if any, inducements were included in these rates.

In support of equity, the Respondent also presented some 40 properties where the assessed lease rate is \$10 per sq.ft., However, the Board noted that these indicators were not differentiated by type of store; i.e., supermarket, versus discount store with differing grocery components or building box store as per Marshall and Swift or comparability with the subject property.

It was noted by the Complainant that half of the Respondent's lease comparables were non-arms length leases or lease-backs and thus not true comparables. The Respondent argued that the leases presented by the Complainant that were identified with First Pro as the landlord were similarly non-arms length given the relationship between First Pro and Wal-Mart. The Complainant rebutted that these companies are separate business entities with separate shareholders and further that a review of the Complainant's comparables does not show that Wal-Mart/First Pro leases achieved a lower rental rate than other leases in the chart.

Leases for these kinds of properties are traditionally long term leases; it is difficult to find many comparables that have renewals in the assessment year. Likewise, there are very few sales of similar properties creating difficulty in determining current market value. It was the Board's view, however, that the Complainant provided compelling evidence in sufficient detail to warrant the

reduction in rental rate sought and that the Respondent did not have sufficient lease information to justify the assessment.

This Board, therefore, finds that the market value rental rate of \$8.00 per square foot, which is also supported by equity evidence, is the appropriate base on which to calculate the assessment which is set at \$11,530,000.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF July 2010.


Susan Barry
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.*