

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business 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:

H. Kim, PRESIDING OFFICER

R. Deschaine, MEMBER

J. Pratt, MEMBER

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

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	ASSESSMENTS
757118500	390 Shawville Bv. SE	59168	15,110,000
101046803	6500 Macleod Tr. SW	59207	14,230,000
200787927	5019 Nose Hill Dr. NW	59207	11,210,000
201202215	1818 16 Ave NW	59207	10,680,000
200768687	11320 Sarcee Tr. NW	59207	13,680,000
415063601	100 388 Country Hills Bv. NE	59207	14,970,000
054015904	343 36 St NE	59207	13,710,000
200450021	5125 126 Av. SE	59207	13,680,000

This complaint was heard on the 7th and 8th days of July, 2010 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1 and continued with simultaneous written summaries from both parties due August 6, 2010 and written rebuttal due August 13, 2010.

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

Two preliminary matters were brought up before the hearing, relating to time allotted for the hearing and the admissibility of the rebuttal evidence of the Complainant.

1. Time allotted for hearing

The Complainant had been advised by email that the hearing was scheduled for two days, July 7 and 8, 2010. It now appeared that three days were scheduled, however counsel for the Complainant had another matter scheduled in Toronto on July 9, having been led to believe this hearing would be completed by July 8. Upon discussion, it was determined that all of the evidence could be entered in the two days scheduled. The Board directed that the hearing proceed, and if necessary, argument and rebuttal could be by written submission. This was acceptable to all parties and the hearing proceeded on that basis.

2. Admissibility of rebuttal evidence

Respondent's position:

- a) Timing: The rebuttal submissions were due June 29, and were received in the evening and not seen by the Respondent until the following day. With the holiday on Thursday July 1, and the ensuing long weekend, the first opportunity to meet with the assessor was Monday July 5, allowing insufficient time to properly review the documentation.
- b) Quantity and nature: The timing of the submission would have been manageable if the rebuttal evidence had been "proper" rebuttal. The submission was over 280 pages and consisted not of truly rebuttal but additional evidence submitted in the guise of rebuttal. The Respondent quoted from Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation (MRAC) which specifies rules for disclosure (emphasis added):

8(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

...

- (b) the respondent must, at least 14 days before the hearing date,
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing ***in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing***, and
- ...
- (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing ***in rebuttal to the disclosure made under clause (b)*** in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

The Respondent quoted from "An Advocacy Primer":

Rebuttal evidence should not be used to "sandbag" or split your case. You are expected to give a complete presentation of your case in the first instance ... Accordingly you will not be allowed to introduce evidence that you should have adduced as part of your original evidence. Proper reply evidence, therefore, should be restricted to clear instances of new issues raised by the defendant or unrefuted contradictions arising from the defendant's case.

The rebuttal submissions included information on construction costs, industrial lease rates and sales, and assessments from other municipalities in Alberta. Clearly this evidence is not submitted in rebuttal to the Respondent's disclosure and should not be heard.

Complainant's position:

- a) The Complainant also had to work within the timelines of the Regulation. If they were able to produce 280 pages of rebuttal evidence within 7 days it is reasonable that the Respondent should be able to review it within the same time period.
- b) The evidence under dispute is proper rebuttal evidence:
 - Construction cost information to address the Respondent's building permit cost estimate,
 - industrial lease and sales information to support economies of scale which the Respondent does not allow for in assessing the subjects at the same rate as substantially smaller properties, and
 - the assessment information from other municipalities addresses the Respondent's information respecting rental rates applied by other municipalities.

Decision and Reasons:

The Board considered the submissions and determined that while it was unfortunate that the timing of the holiday effectively eliminated two working days out of the usual five, the legislation does not contemplate "working days" in setting out the timelines. The legislation also does not restrict the quantity of rebuttal evidence and the Board agrees with the Complainant that the time required to produce the evidence would be expected to be more than the time required to review it.

With respect to the nature of the rebuttal evidence, the Board finds that the evidence does respond to the disclosure of the Respondent and is therefore proper rebuttal evidence.

Property Description:

The subject complaints are of eight Home Depot stores located in all four quadrants of the City, some freestanding, some in Community Shopping Centres and some in Power Centres. They are owner occupied therefore no lease information is available.

The stores are all assessed on the income approach based on \$10 per square foot rental rate for the retail space. Other parameters (vacancy rate, vacancy shortfall and cap rate) vary as noted for the various locations and property types:

Address	Type	Retail/ Big Box	% vac	Office/ Mezz	% vac	Op costs	Cap Rate
390 Shawville Bv. SE	Power	116,723	1.0%			9.00	7.5%
6500 Macleod Tr. SW	Community	117,072	1.0%	1,582	2.0%	8.50	8.0%
5019 Nose Hill Dr. NW	Freestanding	97,704	4.0%			8.00	8.0%
1818 16 Ave NW	Freestanding	93,106	4.0%			8.00	8.0%
11320 Sarcee Tr. NW	Power	105,695	1.0%			9.00	7.5%
100 388 Country Hills Bv. NE	Power	115,625	1.0%			9.00	7.5%
343 36 St NE	Freestanding	116,096	4.0%	3,384	4.0%	8.00	8.0%
5125 126 Av. SE	Power	105,695	1.0%			9.00	7.5%

Issues:

The Complainant identified the following issues on the Complaint forms, but not all issues were relevant to all properties:

- The assessor is required to take into account the principle of equity in arriving at the assessment. As similar and comparable properties are assessed at lower rates, the valuation placed upon the Home Depot property is in excess. The subject property assessment is overstated and inequitable when compared to other similar properties.
- The property assessment is in excess of the legislated market value standard as required by the Municipal Government Act and regulations. The City has relied upon an incorrect rental rate of \$10.00 per square foot. The correct rental should be \$8.00 per square foot.
- The City has relied upon an incorrect vacancy rate, the correct vacancy rate should be 2.0% (identified as an issue on properties with vacancy rates applied of 1.0% and 4.0%).
- The City has relied on an incorrect capitalization rate of 7.5% per square foot [sic]. Market evidence and industrial report evidence supports that an 8.0% capitalization rate is applicable to the subject property. An equity analysis indicates that other similar big box stores have had an 8.0% capitalization rate applied in their assessment determination (identified as an issue on properties with capitalization rates applied of 7.5%).
- The City has relied on an incorrect vacancy shortfall rate; it should be \$9.00 per square foot. An equity analysis indicates that other similar big box stores have \$9.00 per square foot rate applied in their assessment determination (identified as an issue on properties with vacancy shortfall rates of \$8.00 and \$8.50).

The vacancy rate and vacancy shortfall issues were abandoned at the hearing; however the analysis presented used 1% vacancy and \$8.00 per square foot vacancy shortfall for all properties. The Complainant concurs with the income approach to value methodology used by the Respondent, but does not agree with the rental rate and the capitalization rate used. Therefore the issues presented at the hearing were:

1. Rental rate
2. Capitalization rate
3. Support of value requested using cost and sales comparison
4. Support of value requested based on equity

Complainant's Requested Values:

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	REQUESTED COMPLAINT FORM	ASSESSMENTS REVISED
757118500	390 Shawville Bv. SE	59168	11,193,000	11,323,000
101046803	6500 Macleod Tr. SW	59207	11,244,000	11,510,000
200787927	5019 Nose Hill Dr. NW	59207	9,259,000	9,478,000
201202215	1818 16 Ave NW	59207	8,823,000	9,032,000
200768687	11320 Sarcee Tr. NW	59207	10,016,000	10,253,000
415063601	100 388 Country Hills Bv. NE	59207	11,087,000	11,216,000
054015904	343 36 St NE	59207	11,323,000	11,590,000
200450021	5125 126 Av. SE	59207	10,016,000	10,253,000

The requested assessments were based on market value using the income approach using \$8/sf lease rate, 1% vacancy, \$8 operating costs, 1% vacancy shortfall, and 8% cap rate.

Board's Decision in Respect of Each Matter or Issue:**Issue 1: Rental Rate****Complainant's Position**

A critical step in the income approach is identifying proper market rents relative to the property being valued. Box stores have sub-classifications based on their replacement costs and their design and construction. This is recognized by Marshall and Swift (M&S), which has the following classifications (Italicized notations provided by the Complainant):

- 458 Warehouse Discount Store (*Building Box*) – Warehouse construction with minimal interior partitions. Membership type stores typically fall into this category. *eg. Home Depot, Rona*
- 319 Discount Store (*Discount Box*) – Generally built as large, open shell one storey structures with some partitioning for offices and storage areas *eg. Zellers or Wal-Mart*
- 446 Supermarkets (*Grocery Store*) – Generally built as large, open shell one storey structures with some partitioning for offices and storage areas *eg. Safeway*

Cost differences of classifications for comparable sizes show Discount Box and Building Box have similar costs, whereas Grocery Store is higher. July 2009 M&S Box Store building costs in Calgary for 130,000 SF size is as follows:

Building Box	\$60.34/SF (Home Depot)
Discount Box with limited grocery component	\$67.67/SF (Zellers)
Discount Box with 22% grocery component	\$71.63/SF (Original format Wal-Mart)
Discount Box with 34% grocery component	\$73.92/SF (Supercentre format Wal-Mart)
Supermarkets	\$86.06.SF

The subject stores are classified as 458 Warehouse Discount Store, and cost less to build because of a very low level of finish. Market rents for the most comparable discount box store leases include Wal-Mart and Zellers leases. Anchor tenant leases are typically signed for 15-25 year terms with no incremental increases, as compared to CRU (commercial retail unit) leases which have significantly shorter terms. The big box store market is very stable. The

commencement dates do not show any significant variation, and there are no step-up clauses. 24 leases across Canada with commencement dates between 2000 and 2007 show the stability in the marketplace. The Complainant presented 11 leases of big box stores in Alberta. They demonstrate homogeneity of the market for retail anchor locations within shopping centres or power centres across Alberta:

No.	Shopping Centre	City	Size	Start	Term	Face Rate	Net of inducements
A1	Deerfoot Mall	Calgary	132,375	2004	20	6.85	2.34
A2	South Trail	Calgary	130,224	2002	20	7.78	5.85
A3	Royal Oak	Calgary	133,000	2004	20	10.00	5.93
A4	Forest Lawn	Calgary	96,132	2006	15	4.00	1.23
A5	Shawville	Calgary	122,616	1996	15	7.00	4.55
A6	Signal Hill	Calgary	112,468	1997	15	8.00	5.00
A7	Lethbridge South	Calgary	193,115	2001	20	8.24	6.98
A8	Clareview Town Centre	Edmonton	125,079	2004	20	8.46	7.60
A9	West End	Edmonton	127,405	2004	20	8.90	8.90
A10	St. Albert	St. Albert	129,121	2002	20	7.05	7.05
Average						7.63	5.54
Median						7.89	5.89
Renewal of a 1966 lease for a 5 year term in 2007 (\$1.62/SF plus % of retail sales = \$7.15 in 2009)							
A11	Macleod Trail	Calgary	136,720	2007	5	7.15	7.15

Inducements include architectural allowances, free rent, limits on common area maintenance charges and cash payments to enter into the lease. These payments can be substantial and must be factored in when determining lease rates. The average and median of the face rates show that the \$8/SF requested is reasonable, and when the cash inducements are factored in the actual lease rates are significantly less than the \$10 rate used by the Respondent.

Respondent's Position

Zellers stores are typically located in enclosed shopping centres and are not comparable to the subject. Some of the Wal-Mart leases are suspect because the relationship between Wal-Mart and First Pro is not arms length. Previous MGB and CARB decisions were presented to support these positions.

The Respondent presented 7 leases of Rona, Canadian Tire, and the one Wal-Mart lease that was not First Pro:

No.	Address	Size	Start	Term	Face Rate
R1	6880 11 St SE	124,243	2009-09	5	9.59
R2	11938 Sarcee Tr NW	95,423	2008-03	20	14.50
R3	12330 Symons Valley Road NW	99,650	2007-11	20	14.50
R4	8888 Country Hills Bv. NW	132,228	2003-10	20	10.00
R5	2665 32 St NE	92,956	2001-07	20	12.86
R6	9630 Macleod Tr SE	134,372	2001-07	20	11.25
R7	388 Country Hills Bv NE	74,555	1999-11	20	15.27
Median					12.86

The Respondent did not adjust for the CAM limit because if there is a cap on CAM for the anchor, the shortfall is paid by the other tenants. The architectural allowances should not be

adjusted because tenant improvements add value to the building. The leases support the \$10 rate applied to the subject.

Complainant's Rebuttal:

Two of the Rona leases were for properties that were offered for sale in 2001 with 20 year fixed rate leases with contractual increases, as evidenced by an advertisement listing the properties offered. The Complainant stated that the Canadian Tire leases were also sales/leasebacks and presented a press release from August 2008 announcing the sale and leaseback of 12 properties. The specific properties were not identified; however the Complainant believes that these properties were included. Sale/leasebacks are not indicative of market value.

One of the leases is significantly smaller than the subjects. The principle of economies of scale (diminishing returns) is elemental to the marketplace and in fact recognized by the Respondent in allocating lower rental rates for larger ranges of size for CRUs in shopping centres.

The one Rona lease that is not a sale/leaseback includes a \$49/SF tenant improvement allowance. The courts have upheld an MGB order that stated that leasehold improvements do not typically add value to the owner. Therefore, that lease should be adjusted downwards by \$2.45. The Wal-Mart lease included significant inducements and cannot be considered a \$10 lease; the architectural allowance, free rent and CAM limit bring the rate down to \$7.98 and to \$5.83 with the cash inducement. Without details of inducements, the Respondent's lease rates are not reliable.

The Board orders cited by the Respondent, specifically MGB032/10 respecting the 2008 appeal of the subject properties, determined that the First-Pro leases were relevant, and reduced the lease rate to \$9. The Complainant submits that changes in market conditions between 2007 and 2009 supports a reduction in the lease rate.

Decision and Reasons:

It is generally accepted that sale/leaseback rates are not a good indicator of market value since the lease rate would affect the sale price, and the Respondent agreed to eliminate the two Rona leases which were demonstrated to be sale/leasebacks. There was no specific evidence that the two Canadian Tire leases were also sale/leasebacks, but the Board noted their assessments are \$10/SF and supports the Complainant's position that the \$14.50-\$15 lease rates do not reflect market rates.

The Board also agrees that the leases should be adjusted to account for inducements. While it could be argued that leasehold improvements add value to the owner, free rent and cash payments to enter into a lease would not. Only one of the Respondent's leases had inducement details available, being also one of the Complainant's leases. After cash inducements, this lease is at \$7.83/SF, not \$10 as indicated in the Respondent's materials. The other leases may require similar adjustment, therefore the Board found them to be unreliable.

The Board did not consider lease rates for assessment purposes in other municipalities to be relevant. A significantly higher cap rate had been applied and no evidence was presented with respect to whether the assessment rates reflected typical market rates in those municipalities.

On balance the Complainant's rental rates were more compelling. Further, Home Depot stores

generally have a significantly lesser degree of finish than the comparables. Therefore the Board finds the requested \$8/SF lease rate to be appropriate.

Issue 2: Capitalization Rate

Complainant's Position

The Complainant provided three sales of retail plazas in May and July 2009 that indicated a cap rate range of 8.30% to 8.70%. The 2009 Colliers International Capitalization Rate Report was presented and indicated cap rates of 7.5 – 8.0% in Calgary for Power/Lifestyle Centre and Small Box (stand alone). CB Richard Ellis Canadian Cap Rate Survey second quarter 2009 report had rates of 7.15% to 8% for Calgary. The Respondent uses 7.5% and 8% cap rates on the subjects, but the 7.5% cap rate does not recognize the risk in having a single large tenant should they vacate. The appropriate cap rate is 8% for all of the stores.

Respondent's Position

All of the Home Depots are coded for different locations. The cap rates applied were 8% for Freestanding and Community shopping centres and 7.5% for Power Centres. The Respondent applies different cap rates for various property types supported by cap rates in the marketplace, for example strip malls are 8.25% while Group A regional shopping centres such as Chinook and Market Mall are 6.75%. Vacancy and operating costs are applied according to property type and quadrant.

Decision and Reasons:

The properties are separately titled, however the risk to the income stream in a location where there are a large number of retail anchors located in close proximity would be expected to be less than in a stand-alone situation. The range of cap rates provided in the third party reports was 7.15 to 8%. The Board finds that the 7.5% cap rate is appropriate for properties located in Power Centres and does not agree that the cap rate should be the same as that for freestanding or community centres.

The Complainant abandoned the vacancy and operating costs issue at the hearing. Nevertheless, the Board is of the opinion that the Respondent's data, derived from the Assessment Request for Information reports, would likely be reliable.

Issue 3: Value based on Cost and Sales Comparison

Complainant's Position

While the Complainant agrees that the income approach is appropriate, the requested assessment was analyzed using on the cost approach and sales comparison approach to demonstrate that the value was supportable.

The Complainant presented the January, 2008 sale of a vacant 129,700 big box store in Edmonton for \$115.65/SF. Based on the City of Edmonton's valuation parameters, the sale supports a rental rate of \$8.29 and has since been demised into three premises. Closed big box stores are generally not marketable - other big box stores across Canada sold for between \$48 and \$105/SF and have been demolished, demised or converted to other uses.

The cost approach was not discussed in detail; however in rebuttal the Complainant noted that estimated construction costs could include cost overruns and site work. The City of Edmonton's Replacement Cost New calculation for a new Super Centre format Wal-Mart store was \$77/SF.

Respondent's Position

The Respondent presented a building permit application for a proposed 128,500 SF Lowes store in close proximity to the South Trail Home Depot. Lowes is similar to Home Depot and the estimated construction cost was \$10,874,900 or \$84.62/SF. The vacant land assessment for that site is \$6,780,000 for a total project cost of \$17,654,900 or \$137/SF. The subject assessments are \$115 to \$130.

Decision and Reasons:

The evidence provided by both parties was inconclusive. The limited sales information did not provide a reliable determination of value, and the estimated costs on a building permit application could not be considered accurate. Further, since both parties agreed that the income approach was appropriate for determining the market value of the subject, the Board was not aided by the limited cost and sales analysis.

Issue 4: Value based on Equity

Complainant's Position

The rental rate applied to the subject Home Depot stores is inequitable with other stores that are assessed at \$7 and \$8. The comparables are Wal-Mart and Zellers stores in various locations. The Respondent's equity comparables list Superstores assessed at \$10/SF. Considering their higher construction costs, the subjects are over-assessed at \$10. The Complainant also presented other Board orders issued previously that set the rental rates at \$7 to \$9 on appeal.

Respondent's Position

The Respondent presented 40 equity comparables that are all assessed based on \$10/SF, including Canadian Tire, Costco, Home Depot, IKEA, Rona, Superstore and Wal-Mart in all quadrants. The examples cited by the Complainant have been given reductions to recognize the state of the shopping centre and renovations under way.

Decision and Reasons:

The subject assessment is not equitable with the comparables. The Board accepts that grocery stores such as Superstore cost more to build, and it is inequitable to assess them at the same rate per square foot as the subject properties which have less finish and significantly lower construction costs.

Board's Decision:

The complaints are allowed, in part, and the assessments reduced as follows based on a rental rate of \$8 and all other parameters unchanged:

ROLL NUMBERS	LOCATION ADDRESSES	HEARING NUMBERS	ASSESSMENTS
757118500	390 Shawville Bv. SE	59168	12,060,000
101046803	6500 Macleod Tr. SW	59207	11,360,000
200787927	5019 Nose Hill Dr. NW	59207	8,890,000
201202215	1818 16 Ave NW	59207	8,470,000
200768687	11320 Sarcee Tr. NW	59207	10,920,000
415063601	100 388 Country Hills Bv. NE	59207	11,940,000
054015904	343 36 St NE	59207	10,950,000
200450021	5125 126 Av. SE	59207	10,920,000

DATED AT THE CITY OF CALGARY THIS 8 DAY OF September 2010.



H. Kim

Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:

NO.	ITEM
1C	Complainant's evidence
2R	Assessment Brief
3R	Board Order MGB 032/10 dated March 10, 2010
4C	Complainant's rebuttal
5R	Excerpt from An Advocacy Primer, 3rd ed. Lee Stuesser
6R	Excerpt from AR310/2009 <i>Matters Relating to Assessment Complaints Regulation</i>
7C	Complainant's Summary and Argument
8R	Respondent's Summary and Argument
9C	Complainant's Rebuttal
10R	Respondent's Rebuttal

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
Peter Milligan	Lawyer, Miller Thomson LLP - Counsel for the Complainant
Linda Shimek	AEC International Inc.
Paul Frank	Lawyer, City of Calgary - Counsel for the Respondent
David Zhao	Assessor, City of Calgary
Edwin Lee	Assessor, City of Calgary
Tanya Woo	Assessor, City of Calgary

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.*