

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

Wal-Mart Canada Corporation (as represented by AEC International Inc. and Wilson Laycraft, Barristers & Solicitors), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
J. O'Hearn, MEMBER
A. Zindler, MEMBER***

These are complaints to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBERS:	757118203 201451093
LOCATION ADDRESSES:	310 SHAWVILLE BV SE 7979 11 STREET SE
HEARING NUMBERS:	64068 64073
ASSESSMENTS:	\$21,160,000 \$24,450,000

These complaints were heard on 18 day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Ms. B. Soulier* *Agent, AEC International Inc.*
- *Mr. B. Dell* *Lawyer, Wilson Laycraft*

Appeared on behalf of the Respondent:

- *Mr. P. Sembrat* *Assessor, City of Calgary*
- *Ms. C. Dao* *Lawyer, City of Calgary*

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

The parties requested that the files #64068 and #64073 be heard together as the evidence and argument pertaining to these two complaints is similar. The Board agreed with the parties' request.

During the course of the hearing, an issue arose in regards to the correct square footage for the property located at 310 Shawville BV SE. It was agreed upon by the parties that the area is 158,002 square feet (not 127,951 square feet) which, consequently, increased the Complainant's request from \$12,790,000 to \$15,800,000.

The Board noted the disclosure packages from both parties refer to a third Wal-Mart property located at 8888 Country Hills BV NW; however, that complaint is scheduled to be heard by the same panel on the week of September 19, 2011 as there are multiple representatives who filed complaints on behalf of the community shopping centre's property owner and its tenants.

Property Descriptions:

The subject properties are known as the Wal-Mart properties located in Shawnessy and Deerfoot Meadows.

The property located at 310 Shawville BV SE is a single storey, freestanding improvement. The building is comprised of 158,002 square feet and was constructed in 1998. It is situated on 12.62 acres of land. The space type is retail/big box and its property use is "shopping centre-power". The land use designation is "commercial-regional".

The property located at 7979 11 Street SE is a single storey, freestanding improvement. The building is comprised of 182,597 square feet and was constructed in 2009. It is situated on 19.06 acres of land. The space type is retail/big box and its property use is shopping centre-power. The land use designation is commercial-regional.

Both properties were assessed as Big Box stores 100,001+ sq ft and were valued based on the income approach. The only issues in contention before the Board are the market net rental rate of \$10.00 psf and 7.25% capitalization rate.

Issues:

1. The appropriate market rental rate should be changed from \$10.00 psf to \$8.00 psf.
2. The capitalization rate should be changed from 7.25% to 7.75%.

Complainant's Requested Values: \$12,790,000 for 310 Shawville BV SE (*adjusted at hearing to \$15,800,000 based on the corrected square footage*);

\$18,250,000 for 7979 11 ST SE

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

1. The appropriate market rental rate should be changed from \$10.00 psf to \$8.00 psf.

The Complainant submitted that the subject properties are discount department stores and therefore other discount department stores, such as Zellers, should be considered as these leases would constitute market. The Complainant indicated that previous Boards had relied on the lease rates for the Zellers properties located at Shawnessy and Signal Hill, (\$7.00 and \$8.00 psf respectively)(Exhibit C1, page 22). Moreover, the Complainant stratified several lease rates to reflect the different rates (on average) achievable: full line department store such as Sears (\$4.50 psf); discount department stores such as Zellers (\$5.86 psf); discount box stores such as Wal-Mart (\$8.21 psf); and grocery stores (\$14.05 psf) (Exhibit C1 page 22).

The Complainant submitted the big box store market is very stable with long term leases in place (15-25 years). The Complainant submitted 12 leases of National Retailers that commenced between 1996-2007 to show that there were no marked increases in net rental rates or term changes (Exhibit C1, page 25). Five of the twelve properties were taken outside the municipality of Calgary to include Edmonton, Lethbridge and St. Albert. The Complainant submitted, that based on the same property classification, it appears that this is a fairly homogenous market throughout the Province with all stores possessing strong retail attributes such as anchor locations within shopping centres or power centres. The face rents reflect an average of \$7.59 psf and a median of \$7.77 psf for properties which include Zellers, Wal-Mart and The Brick. The Complainant submitted that several of them include tenant inducements (architectural allowances, cash inducements and limits on common area maintenance). Including the cash allowances and expense limits, the average net rent is \$6.88 psf and median of \$7.03 psf.

The Complainant also submitted several rental rates of Sears and Zellers properties located throughout Canada to support the contention that rental rates remained consistent during the period of 1996- 2007 at an average of \$5.33 psf and \$6.06 psf (Exhibit C1, page 26).

The Complainant submitted the sale of a discount box store in South Edmonton Common Shopping Centre, which was a former national retailer location in support of the \$8.00 psf request (Exhibit C1, page 55). It was comprised of 129,700 square feet and had sold for \$15,000,000 in January 2008. It was vacant at the time of sale. In its Sales Analysis Pro Forma

dated January 15, 2008, a 7% capitalization rate was used as well as a rental rate of \$8.29 psf (Exhibit C1, page 56). The Complainant submitted that the South Edmonton Common sale was in a superior location and represents the top of the market in Alberta. The Complainant also referenced the cost approach for illustrative purposes only (Exhibit C1, pages 43-54).

Lastly, the Complainant argued the City of Calgary have assessed the subject properties at \$8.00 psf in previous assessments and based on a stable market, that these rates should remain the same (Exhibit C1, page 42).

The Respondent submitted two lease comparables of Big Box retail of 100,001+ square feet to support the \$10.00 psf rate (Exhibit R1, page 100). However, the Respondent seemed to abandon the comparable located at 6880 11 Street SE as a result of the Complainant's challenge that this lease is non arm's length. The only lease comparable was the 8888 Country Hills BV NW which is 132,228 square feet. This lease, as reflected in the Assessment Request for Information, started in October 2003, reflects a rate of \$10.00 psf for a 20 year term (Exhibit R1, page 57). The Respondent submitted that property is part of a shopping centre and is part of an anchor.

The Respondent submitted 33 equity comparables of Big Box space 100,001+ square feet located throughout the City's four quadrants which were assessed at \$10.00 psf (Exhibit R1, pages 93 & 94). He excluded the Wal-Mart property located at 1200 37 ST SW which he conceded was assessed at \$7.00 psf upon questioning by the Complainant. The Respondent indicated that it is the space that is assessed, not the type of tenancy, therefore regardless of whether the occupant was Home Depot, Costco Wholesale, Real Canadian Superstore, etc. they all received the same assessed rate.

The Respondent also provided 30 lease comparables rates for Junior Big Box space (14,001- 50,000 square feet) and 5 lease comparables for Big Box Space (50,001- 100,000 square feet) to reflect the rents achievable for each category (Exhibit R1, pages 101 & 102). The medians are \$17.05 and \$14.50 psf respectively.

The Board was not convinced by the Complainant's evidence that a reduction in the rental rate is warranted. The Board placed less weight on the Complainant's lease comparables because five of the twelve are located outside of the City of Calgary. Section 467(2)(c) of the *Municipal Government Act* states:

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality.

The Board placed less weight on those comparables located outside of the immediate municipality because market conditions can vary greatly between cities. The Board also placed less weight on the two Zellers comparables that had leases of \$7.00 psf and \$8.00 psf signed in 1996 and 1997 with 15-year terms as these leases were quite dated and the third Zellers comparable, which is smaller (96,132 sq. ft.), is located in a Mall as opposed to a free standing structure.

The Board also placed less weight on the sale of the South Edmonton Common property in which the Complainant stated was in a superior location and therefore indicative of the top of

the Alberta market. However, that South Edmonton Common property's location was in relation to other locations within the City of Edmonton, not province-wide, as evidenced in that Board's finding (Exhibit C1, page 56).

Be that as it may, the Board finds the market evidence presented by the Respondent in support of the \$10.00 psf rate was insufficient. One lease comparable in support of the \$10.00 psf rate certainly warrants closer examination.

2. The capitalization rate should be changed from 7.25% to 7.75%.

The Complainant submitted a capitalization rate study of several recent retail sales to derive a capitalization rate which indicated an average of 8.0% and a median of 8.1% (Exhibit C1 page 34). The Complainant indicated that these are the best sales available based on the limited number of sales in the size category of the subject properties and rental income data is not readily available. Moreover, based on a trend line, it can be inferred that a capitalization rate of 7.75% would be appropriate for properties between 110,000-125,000 square feet (Exhibit C1, page 35).

The Complainant also indicated that potential tenants for this large of a space are not as prevalent as smaller tenants. The ability to lease such a space and the risk associated with investing in larger spaces increase significantly. The Complainant submitted this is further supported with the property located in the South Edmonton Common in which a former national retailer space remained vacant for 2.5 years until the space was demised into 3 rental units (Exhibit C1, page 36).

The Respondent submitted the capitalization rate for power centres in 2011 is 7.25% (Exhibit R1, page 104). The Respondent submitted the capitalization rate is prepared first then it is compared to industry reports as a check rather than a source. It is the best judgement of what is happening in the market. The Respondent submitted that the City's capitalization rates fit within the range for power centres in CB Richard Ellis Published Report for Q2 in 2010, (6.75- 7.25%), as opposed to the Complainant's request of 7.75% (Exhibit R1, page 105).

The Respondent submitted that there is a challenge in relying on comparables from outside the municipality and it is difficult to make adjustments. For example, the South Edmonton Common sale was part of a buy-back arrangement and it had restrictive covenants on retail uses which have to be taken into account (Exhibit R1, page 302). There must be compelling information required to make adjustments otherwise the results are not reliable.

The Board reviewed the sales comparables presented in the Complainant's capitalization rate study (Exhibit C1, page 34; Exhibit C2, pages 39-62). The properties were comprised of multi building sites constructed between 1981- 2010 and had a gross square footage 45,653 sq. ft. and 86,025 sq. ft. in comparison with the subject buildings that are 158,002 sq. ft. and 182,597 sq. ft.

The Board finds there is a large amount of land attributed to the subject properties which is not shared by the comparables. The land parcels ranged between 129,373 sq. ft. to 360,676 sq. ft. (except for one comparable at 880,347 sq. ft.), as opposed to the subject properties at 549,727 sq. ft. and 830,253 sq. ft. The Board finds the underlying land value for the subject properties is significant and would have to be reflected in the assessments.

The sale price per square foot ranged between \$181 psf to \$431 psf whereas the subject properties' was assessed at \$134 psf. The Board also noted six of the eight comparables were older properties (2000 or less) exhibiting a higher cap rate 7.9%-8.4% which suggests a higher risk associated with older buildings whereas the two newer buildings (2009 and 2010) pose less risk and are attracting capitalization rates of 7.3% and 7.4%.

The comparable located at 2929 Sunridge Way NE comprised of 82,334 sq. ft. on 20.21 acres provided some guidance to the Board. It sold in 2009 for \$19,585,400 with a 7.3% capitalization rate. However, the sale did not include the vacant land (10 acres) as that is designated for a new Lowe's Home Improvement Warehouse comprised of 127,333 sq. ft. and will be sold upon completion for \$19 million in late 2010/ early 2011, (Exhibit C2, page 52).

Based on the newer comparables presented by the Complainant in the capitalization rate chart, there is support for the current capitalization rate of 7.25%, not 7.75% as requested by the Complainant.

In passing, the Board noted the trend line graph did not specifically address the correlation between the size and the capitalization rate for the subject properties. The study addressed areas between 35,000-115,000 sq. ft. The Complainant stated the cap rate of 7.75% would be appropriate for gross rental lease area between 110,000-125,000 sq. ft.; however, the subject properties are 158,002 sq. ft. and 182,597 sq. ft.

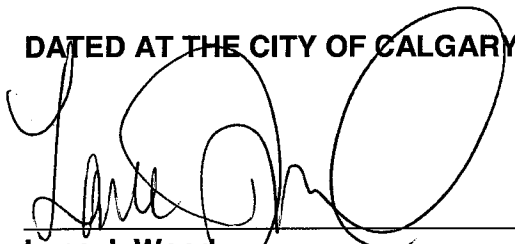
The Board finds the Respondent's presentation in regards to the capitalization rate was insufficient as there was no market evidence submitted to support the 7.25% capitalization rate.

Board's Decision

The decision of the Board is as follows:

- The 2011 assessment for the property located at 310 SHAWVILLE BV SE is confirmed at \$21,160,000; and
- The 2011 assessment for the property located at 7979 11 STREET SE is confirmed at \$24,450,000.

DATED AT THE CITY OF CALGARY THIS 15 DAY OF SEPTEMBER 2011.



Lana J. Wood
Presiding Officer

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

EXHIBIT NO.	ITEM
1. C1	Complainant's Submission Part 1
2. C2	Complainant's Submission Part 2
3. C3	Complainant's Legal Analysis Part 3
4. C4	Complainant's Rebuttal Part 4
5. R1	Respondent's Assessment Brief

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.*