

**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:

***77336 Alberta Ltd., Mike Martin CFO (as represented by AEC International Inc.),
COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***D. Trueman, PRESIDING OFFICER
Y Nesry, MEMBER
D Morice, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 123191900

LOCATION ADDRESS: 9650 MacLeod Trail SE

HEARING NUMBER: 63217

ASSESSMENT: \$16,640,000

This complaint was heard on 17th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *Adam Payn*

Appeared on behalf of the Respondent:

- *David Zhao*

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

The parties agreed that there was no dispute of either a procedural or jurisdictional nature.

Property Description:

The subject property is a "big box" store occupied by Wal-Mart and consists of 126,719 ft.² of gross leasable area with an additional mezzanine space of 16,910 ft.². The improvements were constructed in 1966 and they are located on a land base of 8.52 acres in the Acadia neighbourhood in the southwest quadrant of the City. The property is somewhat unique in that it is connected to a Rona building supply store and there are no smaller CRU tenants located on the site.

Issues:

The complaint form outlines that there were four issues of complaint, however, at hearing the complainant spoke to only two of these issues and they were:

- 1/ A \$10.00 per sq ft rental rate used by the assessor which the complainant said should have been \$8.00, based upon comparison to other similar retail properties and,
- 2/ A capitalization rate of 7.5% used by the assessor which the complainant said should have been 8% based upon comparison to other similar retail properties.

Complainant's Requested Value: \$13,060,000

Complainant's position

Issue # The complainant presented a chart of leases entitled 'Alberta Big Box' on page 19 of his exhibit C1. This chart depicted leases which had commenced through the period 1996 to 2007 and which were located in the municipalities of Lethbridge, Edmonton and Calgary. The face lease rates ranged from \$4-\$10 with an average of \$7.60 and the net effective rates ranged from \$1.23 to \$8.90 with an average of \$5.84. These properties ranged in size from approximately 74,000 ft.² to approximately 213,000 ft.². The complainant reckoned that this was the best evidence available for a current market lease rate of \$8.00 per square foot annually for the subject property main floor. The complainant allowed that the assessors use of \$1.00 per Sq. foot for the mezzanine area was appropriate. The complainant provided testimony that current low interest rates supported reduced building costs thus the opportunity for lower rents at the time of valuation. The complainant went on to point out that from the perspective of equity with other big-box stores in Calgary, his chart on page 36 of exhibit C1, indicated that

comparables known as Calgary Deerfoot and Calgary Westbrook were being assessed this year using \$7.00 per Sq. foot. He went on to say that the assessment for his property in years 2008, 2009 and 2010 were based upon \$8.00, while this year it was based upon \$10.00 per square foot.

Issue #2 The complainant presented a chart of shopping center sales on page 28 of exhibit C1, which occurred through 2009 and 2010. These sales demonstrated an average capitalization rate of 8%.

The complainant supported the foregoing conclusions with a lengthy document identified as exhibit C1A which includes support material such as certificates of title, sales reports, an article entitled 'Capitalization Rates for Regional Shopping Centers' and various other documents supporting his contention. The complainant provided further material in his document C1B which consisted of a total of 41 decisions issued through the period 2001 to 2010 regarding large scale retailer's appeals of property assessments. The majority of these decisions centered around an \$8.00 per Sq. foot rental rate.

Said simply, the complainant wanted to be assessed based upon an \$8.00 rental rate and an 8% capitalization rate, which he felt was supported by market activity and the assessments of other similar properties.

Complainants rebuttal

The complainant suggested that the assessor's use of a \$10 rent rate across the variety of larger than 100,000 ft.² tenanted buildings in the city of Calgary was proven wrong by his Analysis of Cost Development Model. He said that his presentation of a comparable lease to Wal-Mart at 8888 Country Hills Blvd. demonstrating a net rent after inducements of \$7.85 per Sq. foot was further proof.

Respondent's position

Issue #1 The respondent presented a chart of two big box lease comparables at page 31 of his document R1 which were for properties in excess of 100,000 ft.² and which indicated an average rent of \$9.80. He went on to further present on page 32, a chart of five lease comparables for Big Box stores in the 50,000 to 100,000 ft² size range which supported an average rental of \$14.43 per Sq. foot. He said that logically as area increased a rental rate would go down and therefore the relationship of \$14 to \$10, for the property types in question, was appropriate. He was particularly critical of some of the market leases presented by the complainant saying that some were of properties which were configured as malls and should instead be freestanding such as the subject, many of the comparables were located in different municipalities and at least one lease was a non-arm's-length transaction. He then presented a chart on page 33 and 34 depicting 32 comparable properties, in excess of 100,000 ft.². These properties are assessed in 2011, using a lease rate of \$10.00 per Sq. foot. He further pointed out the confusion that he felt complainants were experiencing, with respect to the Bentall and Bramalea decisions upon which recent equity complaints have usually depended. To this end he presented a significant amount of legal analysis.

Issue #2 The respondent led very little evidence with respect to market capitalization rates. However, at hearing he pointed out that the complainant's capitalization rate survey contained only two properties which were described as freestanding, similar to that of the subject and that the 7.35% average of these two rates was the best support available for his use of a 7.5% rate. He also reminded the panel that it was uncertain whether the complainant's capitalization rates had been calculated using typical rents or actual rents, saying that the City's use of typical rents and other input factors throughout their assessment calculations ensured consistency.

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

Issue #1 The Board found that the complainant's chart for best evidence for a reduced rental rate provided little assurance that the requested \$8.00 rate was appropriate, given the number of reasonable criticisms regarding many of the lease transactions. At hearing the panel learned that one of the respondent's two lease rate comparables could not be verified as a market transaction however there was one remaining indicator with the logical support of several transactions involving a smaller area and the panel was inclined to prefer this information. On a balance of probabilities, the complainant has to prove that the rent rate they request is a better representation of typical market rent than that used by the respondent to prepare the assessment. The complainant must also demonstrate that when the rent rate requested is used to calculate a revised estimate of market value for assessment purposes, that the revised estimate reflects the fee simple estate value. The Board is not convinced by the evidence that either of these conclusions can be reached. Therefore, the Board is not prepared to reduce the rent rate used in the assessment of the Wal-Mart store Main floor retail space.

Issue #2 The Board heard evidence with respect to the various classes of shopping Center properties i.e. "freestanding", "power centers", "commercial shopping centers", etc., and accepts that each will be reflective of different capitalization rates. As such, the Board accepts the testimony of the parties that the two most recent sales which are described as freestanding properties, similar to that of the subject, are the best indicators of a capitalization rate for the subject property, thus supporting the assessor's use of a 7.5% capitalization rate.

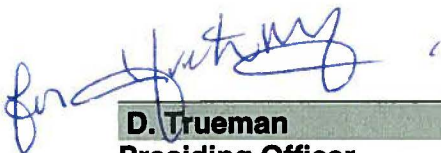
Generally speaking the Board preferred the evidence of the respondent in this case and agrees that the question of an inequitable assessment must first clearly delineate comparability, with respect to both form and function, between the subject and the comparables. Then secondly, it must be clearly demonstrated that there is not an overlap of market (assessed) value range, determined for the subject and the range of equity values determined for the comparables, thereby eliminating doubt which arises from the valid "range of values" concept.

More particularly at hearing the panel was advised that the subject property had undergone changes to a Wal-Mart "superstore". Neither of the parties were able to advise the panel with respect to the effective date of such changes. Given that assessment decisions must be based upon an effective condition date of December 31 the panel were unable to decide to reduce the assessment accordingly.

Board's Decision:

The appeal is denied and the assessment is confirmed at \$16,640,000

DATED AT THE CITY OF CALGARY THIS 28 DAY OF September, 2011.



D. Trueman
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C1A	Complainant support documents
3. C1B	Complainant legal analysis
4. C2	Complainant rebuttal
5. 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 MGB Administrative Use Only

Decision No. 1918-2011-P		Roll No. 123191900		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail	Big Box Store	Income Approach	Lease Rate

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