

**NOTICE OF DECISION      NO. 0098 100/12**

CVG  
1200-10665 Jasper Avenue  
Edmonton, AB T5J 3S9

The City of Edmonton  
Assessment and Taxation Branch  
600 Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review CARB (the CARB) from a hearing held on July 9, 2012, respecting a complaint for:

<b>Roll Number</b>	<b>Municipal Address</b>	<b>Legal Description</b>	<b>Assessed Value</b>	<b>Assessment Type</b>	<b>Assessment Notice for:</b>
9980521	1525 - 99 Street NW	Plan: 0022164 Block: 15 Lot: 3	\$19,176,500	Annual New	2012

*This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.*

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cc: Cameron Corporation

## **Edmonton Composite Assessment Review CARB**

**Citation: Cameron Corporation v The City of Edmonton, 2012 ECARB 2025**

**Assessment Roll Number:** 9980521

**Municipal Address:** 1525 99 Street NW

**Assessment Year:** 2012

**Assessment Type:** Annual New

Between:

**Cameron Corporation  
Represented by Canadian Valuation Group Ltd. (CVG)**

Complainant

and

**The City of Edmonton, Assessment and Taxation Branch**

Respondent

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**DECISION OF  
Don Marchand, Presiding Officer  
Howard Worrell, CARB Member  
Mary Sheldon, CARB Member**

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### **Preliminary Matters**

[1] The witnesses giving testimony were either sworn or affirmed, the choice being that of the individual witness.

[2] The evidence, arguments and submissions as relevant were carried forward from file 9976674 to this file.

[3] At the outset of the hearing one member of the CARB indicated that he had a casual social relationship with the owner of the property. That CARB member indicated that in his opinion that relationship would not interfere with his ability to act fairly and impartially in this matter. Another CARB member advised the parties that some years ago she had been a member of the same law firm as the counsel for the Respondent. That CARB member also indicated that in her opinion that connection would not interfere with her ability to act fairly and impartially in this matter. The parties both agreed that they had no objection to the members continuing to hear this matter. Accordingly, the matter proceeded to a merit hearing.

[4] At the outset of the hearing the CARB was advised that Tom Janzen of CVG would be acting as representative and agent of the property owner and would be assisted during this hearing by Jay Cowen of Cobank Tax Services on behalf of Cineplex Entertainment LP, a tenant of the property.

## **Background**

[5] The subject parcel is one of several parcels that collectively form a Power Centre known as South Edmonton Common; located south of 23 Avenue, east of Gateway Boulevard, west of the Edmonton Research Park and north of Anthony Henday Drive.

[6] The subject parcel consists of 15.514 acres and is the site of two improvements; a year 2000-built Cineplex theater of 74,410 square feet plus mezzanine space of 19,061 square feet and a 2008-built Earl's Restaurant of 6,652 square feet.

## **Issues**

[7] Is the market value of the subject best reflected by the “highest and best use” approach to value plus a nominal amount for the improvement or by the capitalized income approach?

[8] If the property is to be assessed using the capitalized income approach, should the vacancy rate applied to the theatre be 7% or 3%, as per the arguments and evidence carried forward from the hearing of file 9976674 (2012 ECARB 278)?

## **Legislation**

[9] The Municipal Government Act reads:

### ***Municipal Government Act, RSA 2000, c M-26***

s 467(1) An assessment review CARB may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review CARB must not alter any assessment that is fair and equitable, taking into consideration

- a) the valuation and other standards set out in the regulations,
- b) the procedures set out in the regulations, and
- c) the assessments of similar property or businesses in the same municipality.

[10] The CARB gave consideration to the meaning of market value and to the requirements of an assessment made pursuant its market value:

### ***Municipal Government Act, RSA 2000, c M-26***

s 1(1) in this Act,

n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 289(2) Each assessment must reflect

a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

b) the valuation and other standards set out in the regulations for that property.

[11] The CARB also considered the valuation standard as set out within the:

***Matters Relating to Assessment and Taxation Regulation, Alta. Reg. 220/2004***

s 2 An assessment of property based on market value

a) must be prepared using mass appraisal,

b) must be an estimate of the value of the fee simple estate in the property, and

c) must reflect typical market conditions for properties similar to that property.

**Position of the Complainant**

[12] The Complainant submitted to the CARB that the 2012 assessment of the subject was excessive and was neither fair nor equitable. In particular, the Complainant argued that the methodology used by the Respondent in valuing the subject was incorrect. Instead of valuing the subject based on the Respondent’s “highest and best use” approach, the correct and equitable approach was to value the subject using the income valuation method as had been used in the previous years’ assessments.

[13] In support of the position that the “highest and best use” methodology used by the Respondent did not reflect market value, the Complainant argued that the approach to value based on the estimate of land value plus an amount for any improvement was typically used for properties with older buildings and limited income potential. The Complainant noted that, in this case, the theatre portion of the subject was only built in 2000 and was halfway into the life of its lease. Further, the Earl’s Restaurant portion was subject to a lease with a commencement date of 2008, the year it was built. The Complainant argued that both improvements located on the subject parcel were functional, operational and would likely remain so for many years. The Complainant questioned if these considerations were part of the Respondent’s “highest and best use” analysis. Was consideration given to the implications of the current leases and the cost of demolition taken into account?

[14] The Complainant disagreed with the Respondent’s argument that the land value of the subject exceeded its capitalized income potential. The Complainant submitted that the value of \$28.37 per square foot attributed to the subject land by the Respondent was not supported by the Complainant’s assessment comparables. To demonstrate this, the Complainant provided a chart with the assessments of eleven land sites, comparable to the subject, which were assessed at a range per square foot from \$11.30 to \$24.98. The Complainant advised the CARB that

comparables number 3, 7, 8, 9, and 11 had land values for their sites assessed per square foot at \$15.79, \$11.48, \$24.98 and \$21.84 respectively. Assessment comparables numbers 6 and 10 reflected the value of the excess land in those sites and were assessed per square foot respectively at \$12.50 and \$15.00. The Complainant argued for the CARB that, while the location of the subject at South Edmonton Common was clearly a prime, choice location, this evidence of land comparables showed that the value of \$28.37 per square foot attributed by the Respondent to the subject land was overstated.

[15] The Complainant also noted that value of the land for comparable number 10, which is a developing Power Centre at the Currents of Windermere location, was only \$15.00 per square foot. The Complainant argued further that even if a 50% increase to that \$15.00 per square foot value were granted to the subject to account for its premier location in South Edmonton Common, that value would be lower than what would be generated by the income approach. The Complainant indicated as well that a land value of \$24.00 per square foot for the subject would generate a similar value as that generated by the income approach to value.

[16] The Complainant noted for the CARB that his evidence demonstrated that a value of \$28.00 per square foot for the land value of the subject was excessive and noted as well that, if a land value supported by his evidence was used, the income approach would produce a more accurate measure of value for the subject.

[17] The Complainant concluded that his evidence showed that the income approach to value for the subject was the more appropriate method. The Complainant presented evidence to the CARB that the value pursuant to the income approach for the restaurant portion of the subject was \$2,690,000 and for the Cineplex portion the value was \$14,088,500 for a total 2012 assessment of \$16,778,500. The factors used in calculating the value for the theatre portion pursuant to the capitalized income method included a 7% vacancy rate allowance and a 7.5% capitalization rate.

[18] To support the position that a 7% vacancy rate should be used in the capitalized income approach for the theatre portion, the Complainant provided the evidence of two theatre closures and the subsequent property sales. One of those properties had been in operation as a theatre for 240 months and was vacant for 29 months – a 12.1% vacancy. The other property was in operation as a theatre for 288 months and was vacant for 26 months – a 9.03 % vacancy.

[19] The Complainant also provided the CARB with an MGB decision in rebuttal evidence. The Complainant pointed out the decision in that case which stated that values resulting from the income approach were to be preferred. In that case, the decision was that the properties were not of a sufficiently unique nature to warrant the use of the cost approach. The Complainant also reminded the CARB that in previous years the market value of the subject had been derived using the capitalized income approach.

[20] The Complainant concluded by arguing to the CARB that the value for the subject arrived at pursuant to the capitalized income approach of \$16,778,500 was higher than the estimated land value. Therefore, the best use of the subject was the continued use of the improvements and the appropriate method of valuation was by income. The Complainant requested that the CARB reduce the assessment of the subject to \$16,778,500 based on the income approach and applying a value of \$2,690,000 to the restaurant portion and a value of \$14,088,500 for the theatre using 7% vacancy rate and 7.5% capitalization rate.

## **Position of the Respondent**

[21] The Respondent argued that the appropriate method to value the subject was the “highest and best use” method plus \$500 for the improvements. The Respondent submitted that the value of the subject land, in the premier location of South Edmonton Common, was such that the capitalized income generated by the improvements was lower than the land value shown by land rates modeled by the “highest and best use” method, used to compute a land value for each file in South Edmonton Common. The CARB was provided with evidence that some of the Respondent’s land only assessment comparables were assessed using the income method.

[22] The Respondent advised the CARB that the subject was 15.514 acres or 675,823 square feet in size. A chart of the land only portion of assessment comparables in South Edmonton Common was presented to the CARB (R-2, page 123). These comparables showed an average value per square foot of \$30.65 and a median value per square foot of \$31.29. The Respondent advised the CARB that these land values were from City of Edmonton records and that some of these comparables might have been valued using the income approach. The Respondent advised the CARB as well that there were no sales in South Edmonton Common and argued that the land only assessment comparables provided supported the assessment per square foot of the subject at \$28.37.

[23] The Respondent directed the CARB to a recent article from the Appraisal Institute of Canada, regarding the “highest and best use” analysis (R-2, page 96). It stated that a real estate expert is to:

*“Clearly address the highest and best use of both the site as-if-vacant and highest and best use of the improved property.”*

[24] The Respondent also pointed the CARB to the Canadian Uniform Standards of Professional Appraisal Practice which analyzed “highest and best use” (R-2, page 43):

*“as land is usually appraised as though vacant and available for development to its highest and best use, opinions are required both as to 7.15.1.i the land,, as if vacant and; 7.1511.ii the property, if improved. “*

[25] As well, the Respondent indicated to the CARB discussions in the Basics of Real Estate Appraising manual which analyzed the concept of “highest and best use” as follows (R-2, page 106):

*“The objectives of such an analysis are threefold. First, such identification assists in selecting comparable properties for study. Second, a land value distinct from the property as a whole is required in certain assignments and appraisal techniques. Third, it establishes the use of the property that is anticipated to produce the highest overall return per dollars of invested capital.”*

[26] The Respondent argued that his evidence of the values of land only assessment comparables in South Edmonton Common supported his assessment of \$28.37 per square foot for the subject. The resulting value of \$19,176,500, when that value per square foot is applied to the entire site, would be superior to the value obtained by the capitalized income approach.

[27] A good example of the highest and best use approach, the Respondent argued, was the Staples site in downtown Edmonton. In this regard, the Respondent produced a Composite

Assessment Review CARB order dated November 30, 2010 (R-2, page 111) which states that the appropriate method of valuation in that instance was:

*“the direct sales comparison approach of land value as though vacant based on the highest and best use with a nominal value added for the existing improvement.”*

[28] The Respondent argued that the same approach should be used for the subject property and requested that the CARB confirm the 2012 assessment of the subject at \$19,176,500 based on a “highest and best use” approach with a value of \$28.37 per square foot applied to the land and a nominal \$500 applied to the improvement.

[29] In the alternative, the Respondent submitted that, if the CARB ordered that the income approach was appropriate, the factor to be used in an income approach for the theatre portion would be a 3% vacancy rate. The Respondent orally agreed with the Complainant that a 7.5 capitalization rate for the theatre portion was appropriate. There was no dispute with the Complainant that the value of the CRU Earl’s restaurant portion pursuant to the capitalized income approach was \$2,690,000. The valuation proposed by the Respondent pursuant to the income approach was \$17,759,500.

[30] To support its position that the 3% vacancy rate was the correct rate to apply in the capitalized income approach for the theatre portion, the Respondent provided oral evidence respecting the following typical vacancy rates for commercial properties assessed in Edmonton – 3% for CRU tenants, 1% for main floor tenants, and 5% for upper level office space tenants.

[31] The Respondent also provided a chart which showed nine active Edmonton theatres in business for an average of 33 years, the median age in business for the six commercial theatres was 24 years. The Respondent argued that this showed that theatres have long occupancies and no vacancy during the term of their business life. The Respondent also submitted that the Complainant’s evidence confirmed that during the tenure of its business life, a typical theatre property had no vacancy. The Respondent argued further that the subject theatre was not near the end of its economic life. In the view of the Respondent, a 3% vacancy rate was appropriate to apply in an income approach for the theatre portion of the subject.

[32] In summary, the Respondent argued that the best method of valuing the subject was by the “highest and best use methodology.” If the CARB did not agree and concluded that the subject should be valued by the capitalized income approach, the Respondent argued that a 3% vacancy rate should be used in the calculation for the theatre portion.

### **Findings of the Board**

[33] The Board was not provided with any leases for the CRU restaurant or for the theatre.

[34] The Board was not provided with details of any planning changes with respect to the subject property.

[35] The Board was not provided with any details with respect to any demolition costs with respect to the subject improvements.

[36] The Board was only provided with modeled land value components, not assessments from the Respondent.

[37] The Board was not provided by either party with any sales of land similar to the subject.

[38] Evidence provided by the Complainant showed no indication of any vacancy in the subject theatre's CRU.

[39] No vacancies were shown for comparable theatres across the city

[40] The sales comparables used show minimal vacancy after closure and before the sale of the subject properties.

### **Decision**

[41] The decision of the CARB is to reduce the 2012 assessment of the subject from \$19,176,500 to \$17,759,500.

### **Reasons for the Decision**

[42] The CARB is of the opinion that the evidence provided by the Complainant demonstrated that there is a doubt as to the foundation of a \$28.37 per square foot value used by the Respondent and applied to the subject. The values per square foot of the Complainant's assessment comparables are far lower than the values attributed to the land in South Edmonton Common. In the opinion of the CARB, this evidence brought forward by the Complainant is sufficiently compelling to suggest that a value of \$28.27 per square foot for the land is neither fair nor equitable. As well, the CARB heard evidence that the capitalized income approach would produce a higher value for the subject unless the value per square foot of the land was \$24.00 or more.

[43] In the opinion of the CARB, this means that the responsibility of demonstrating the accuracy of that land value shifts to the Respondent. In the opinion of the CARB it was crucial for the Respondent to support that land value in order to demonstrate that the value of the land necessitated a "highest and best use" approach.

[44] In the opinion of the CARB, the Respondent did not adequately defend its position that the "highest and best use" approach was appropriate. To support the \$28.37 per square foot value, the Respondent presented seven examples of land only components in South Edmonton Common. The CARB was not provided with the actual assessments of these properties or with firm details of which ones had improvements on them and which were valued using the income approach. The CARB was left with land values of the comparables modeled as if they were vacant. The CARB concludes that the Respondent did not provide sufficient evidence to support the value per square foot attributed to the land.

[45] The CARB notes that the Respondent provided the example of the "Staples" site as an example of an underutilized property which would have a higher value pursuant to the "highest and best use" approach. In the opinion of the CARB, the specifics of that site are significantly



different than those of the subject. For example, the CARB was not provided with any evidence of zoning or zoning changes to the subject which would impact its use.

[46] The CARB recognizes the components that make up a “highest and best use” analysis and accepts the definition as *“The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported and financially feasible and that results in the highest value”* (R-2, page 102). The CARB notes that the Cineplex theatre portion of the subject was built in 2000 and that the Earl’s restaurant portion was built in 2008. The CARB was not provided with evidence relating to the cost of removing the improvements already on site nor any cost associated with the leases relating to the subject. The CARB concludes that a complete “highest and best use” analysis was not provided by the Respondent.

[47] The CARB notes the following quote provided by the Respondent (R-2, page 103):

In general, the conclusion of highest and best use of land as though vacant is required except in circumstances where improved properties have structures with significant remaining economic lives and little or no indication of market demand for a change in use.

[48] In the absence of any evidence to the contrary, the CARB concludes that the existing use of the subject has a continuing life, is functional and operational.

[49] Since the CARB is not convinced that the “highest and best use” methodology best reflects the market value of the subject, the CARB is left with the capitalized income approach as the best way to ascertain the market value of the subject.

[50] The CARB notes the arguments by both parties concerning the income approach carried forward from file number 9976674. The CARB does not accept the 7% vacancy rate proposed by the Complainant in calculating the capitalized income value for the theatre portion of the subject.

[51] In the view of the CARB, the position of the Complainant, that a 7% vacancy rate is appropriate for the theatre portion of the subject, is not supported by the evidence. The CARB notes that only the vacancy rate is in dispute and that a 7.5% capitalization rate was agreed to by both parties. As discussed in file number 9976674, the CARB agrees with the Respondent that a 3% vacancy rate is appropriate for the following reasons.

[52] The CARB was not convinced that the assumptions relied upon by the Complainant’s vacancy rate argument were correct. The evidence provided by the Complainant indicated an average 20 year business life cycle for theatre premises. The Complainant’s evidence shows that theatres in Edmonton during their economic life have no vacancy.

[53] No leases for the subject theatre were provided to confirm length of leases, lease conditions, lease start or end dates, other terms or renewal clauses. The CARB, considering the lack of supporting details otherwise, would have to assume that during the period of the ongoing lease on the subject theatre, no vacancy has occurred. As well, evidence was not provided to show that the subject theatre was at or near the end of its economic life and was ready for renovation or other use.

[54] The CARB placed little weight on the Complainant’s two 2007 comparable theatre sales. Network data sheets provided by the Complainant did not show any issue of future retrofit or any

condition on the sale of these existing theatres to another retail use. As well, the vacancy rate calculations by the Complainant included the post sale period to the new owner. No supporting details were provided to show any conditions with regard to the sale and the new owner's time to renovate to another use.

[55] The time on market for both properties was less than six months from date of closure of the theatres to the sale date of the properties. This vacant period falls within the 3% vacancy allowance that the Respondent has provided. The Complainant has indicated that the average lease of a theatre in Edmonton is 240 months and a 3% vacancy over the life of an average theatre lease would be 7.2 months.

[56] Therefore, the CARB is satisfied that the 3% vacancy rate provided by the Respondent to the theatre portion of the subject is appropriate when calculating the value of the subject according to the capitalized income approach.

[57] The CARB concludes that to reduce the 2012 assessment of the subject to \$17,759,500 is correct, fair and equitable.

### **Dissenting Opinion**

[58] There was no dissenting opinion.

Heard commencing July 9<sup>th</sup>, 2012.

Dated this 2<sup>nd</sup> day of August, 2012, at the City of Edmonton, Alberta.

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Don Marchand, Presiding Officer

### **Appearances:**

Jay Cowen, Cobank Property Tax Services Inc.

Tom Janzen, CVG

for the Complainant

Frank Wong, assessor

Steve Lutes, legal counsel

for the Respondent