



## ASSESSMENT REVIEW BOARD

Churchill Building  
10019 103 Avenue  
Edmonton AB T5J 0G9  
Phone: (780) 496-5026

### NOTICE OF DECISION NO. 0098 310/11

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 Board (CARB) from a hearing held on October 31, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9966838	11842 145 Avenue NW	Plan: 7520907 Block: 12 Lot: 6B	\$1,561,500	Annual New	2011

#### Before:

Tom Robert, Presiding Officer  
Brian Hetherington, Board Member  
Howard Worrell, Board Member

**Board Officer:** Jason Morris

#### Persons Appearing on behalf of Complainant:

Peter Smith, CVG

#### Persons Appearing on behalf of Respondent:

Abdi Abubakar, Assessor, City of Edmonton  
Ken Eliuk, Assessor, City of Edmonton

## **PROCEDURAL MATTERS**

The Complainant and Respondent indicated that they had no objection to the constitution of the Board. The Board Members indicated that they had no bias with regard to the matter before them.

## **PRELIMINARY MATTERS**

The Complainant requested that information regarding the rent rolls of comparable properties provided by the Respondent for Roll # 1216522 and Roll # 9966838 not be considered by the Board on the ground that it did not contain enough information for the Complainant to be able to verify the information presented. The Respondent indicated in a letter (R1) prepared by the City's legal representatives that they are prohibited by the *Freedom of Information and Protection of Privacy Act*, RSA 2000 c F-25 [FOIPPA] from revealing the information.

The Board decided to proceed on the basis of the information presented by the parties, and to make a decision as to the weight to be given to all of the evidence taking into account factors such as those complained of by the Complainant. The Board noted that if it found the information was necessary for a fair disposition of the case, they could require the Respondent to provide that evidence under section 465 of the Municipal Government Act, RSA 2000, c M-26, which reads:

### **Notice to attend or produce**

**465(1)** When, in the opinion of an assessment review board,

- (a) the attendance of a person is required, or
- (b) the production of a document or thing is required,

the assessment review board may cause to be served on a person a notice to attend or a notice to attend and produce a document or thing.

With regard to the objection of the Respondent that the information was protected by FOIPPA, the Board noted the exception in section 40(1)(v) of FOIPPA which provides an exception for information disclosed in the course of a quasi-judicial hearing.

### **Disclosure of personal information**

**40(1)** A public body may disclose personal information only

...

- (v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,

## **BACKGROUND**

The subject property is a neighbourhood shopping plaza located in the Caernarvon neighbourhood of northwest Edmonton. The property consists of a single building of approximately 17,000 square feet on a lot of approximately 65,200 square feet. The lot and building are an unusual shape, with the lot's primary access being from the south border of the property, which abuts 145 Avenue for a distance of roughly 150 feet mid-block. The property

was assessed for the 2011 taxation year on the income capitalization approach, and the 2011 assessment is \$1,561,500.

### **ISSUE(S)**

1. What is the market rent for the subject property as of July 1, 2010?
2. What is the appropriate vacancy rate for the subject property?
3. What is the direct capitalization rate for the subject property?

### **LEGISLATION**

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

s 467(1) An assessment review board 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 board 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.

### **POSITION OF THE COMPLAINANT**

The Complainant provided a 13-page brief (C-2) in support of his request for a lower 2011 assessment for the subject property. The Complainant's position is that the subject property's 2011 assessment is excessive when compared to the actual lease and vacancy rates of the subject property. The cap rate is also too high when considering the location and site configurations of the subject property.

The subject property has suffered a chronically high vacancy rate, climbing from 23% in June 2010 to 31% in December 2010. This is primarily due to its location in a residential neighborhood and irregular site configuration, which affords no commercial exposure to tenants on the north side of the property.

Using the June 2010 rent roll (C-1, page 12) identifying the 14,204 square feet of retail, 2,817 square feet of day care space, a 20% vacancy allowance, 2% structural allowance and op costs, the net operating income would be \$110,305. However the actual operating income from the rent roll was \$115,482.

The Complainant agreed with the Respondent's \$8.00 per square foot allocation of rent for the daycare space (C-1 page 4). He disagreed with the allocation of rent for the other tenants.

As previously mentioned, given the adverse location characteristics and site configuration of the subject property, the capitalization rate should be increased to 9%. When this is applied to the net income of either \$110,305 or \$115,482, the market value of the subject property would range from \$1,226,000 to \$1,283,000.

Based upon the above analysis, the Complainant requests the 2011 assessment be reduced from \$1,561,500 to \$1,250,000.

## **POSITION OF THE RESPONDENT**

The Respondent provided a 56-page brief that contained photos, maps, an assessment principal overview, rent roll for the subject property, assessment details report, five equity comparables and four equity rent comparables for retail plaza properties.

The Respondent provided an equity comparable chart (R-1, page 41) which showed five equity comparables with assessments per square foot that ranged from \$89.84 to \$107.19 per square foot. These 2011 comparable assessments support the assessment of \$91.70 per square foot.

Four comparable equity rents from similar rental plaza properties (C-1, page 42) were provided to show that the subject property had lower than market rents.

The Respondent stated that the Complainant failed to provide any evidence to support his request for a cap rate increase. The physical characteristics of the building have nothing to do with the cap rate.

The vacancy rate has been applied at 15% (R-1, page 27) as there was no evidence to show that the 2010 rent roll was a long term chronic situation with vacancies in the plaza.

The Respondent requests confirmation of the 2011 assessment at \$1,561,500.

## **DECISION**

The decision is to confirm the 2011 assessment.

Roll Number	Original Assessment	New Assessment
9966838	\$1,561,500	\$1,561,500

## **REASONS FOR THE DECISION**

The Board was not persuaded by the Complainant's argument that the rent rates applied in calculating the 2011 assessment of the subject property were excessive. The Complainant did not provide comparable market rent evidence to support this issue, other than the subject's actual rental roll. The leases indicated on the rent roll that some of the leases had expired on July 2010 and others were on a month-to-month basis and did not support the argument for market rents in the area of the subject.

In regards to the issue of vacancy, the Board determined that the vacancy rate applied of 15% is representative of the subject property. The Respondent recognized there is a history of vacancy within the subject property and had added 5% above the typical rate, however there is no evidence as to how long this condition has existed.

On the issue of capitalization the Board did not receive evidence to support any adjustment other than oral evidence suggesting the shape of the subject site was not typical to properties within the subject area.

**DISSENTING OPINION AND REASONS**

There was no dissenting opinion.

Dated this 1st day of November, 2011, at the City of Edmonton, in the Province of Alberta.

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Tom Robert, Presiding Officer

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*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: 1080253 ALBERTA LTD