



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 71/11

B H Shopping Centre Ltd
3200-10180-101 Street NW
Edmonton, AB T5J 3W8

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 July 20, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9953088	10807 Castle Downs Road NW	Plan: 8121936 Block: 37 Lot: 1B	\$7,580,000	Annual New	2011

Before:

Robert Mowbrey, Presiding Officer
John Braim, Board Member
Jasbeer Singh, Board Member

Board Officer: Nicole Hartman

Persons Appearing on behalf of Complainant:

Mike Fedoretz, B. H. Shopping Centre Ltd.
Moe Rahall, Ergil & Jackson Appraisals Ltd.
Shey Ergil, Ergil & Jackson Appraisals Ltd.

Persons Appearing on behalf of Respondent:

Tanya Smith, City of Edmonton, Law Branch
Tim Dmytruk, City of Edmonton, Assessor

PRELIMINARY AND PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board.

In addition, the Board advised the parties that the Board was not aware of any circumstances that would raise an apprehension of bias with respect to the file.

The Respondent advised the Board that the request for a section 295 (MGA) preliminary hearing had been withdrawn by the Respondent.

During the hearing, the Respondent objected to allowing the Complainant's witnesses to be named as experts to present their evidence and opinion. The Respondent also objected to the paneling of witnesses while responding to the cross-examination questions by the Respondent.

The Board recessed, deliberated and rendered its decision as follows.

The Presiding Officer advised the parties that the Board's decision was not to formally "qualify" the witnesses as experts, however they would be allowed to present evidence. The Board does not have to follow the same rules of evidence as a court. The Board noted the expert witnesses' qualifications and experience in order to place appropriate weight on their testimony.

Regarding paneling of witnesses, the Presiding Officer advised the parties that the witness giving the evidence should be the witness that answers the cross-examination regarding the testimony. The Presiding Officer advised the parties that caucusing for answers would be discouraged.

BACKGROUND

The subject property is a two-storey shopping centre known as B.H. Shopping Centre, located in the Castle Downs neighbourhood. Built in 1978, the shopping centre has a total leasable area of 59,810 square feet.

ISSUE(S)

1. What is the appropriate market rental rate for the 2011 assessment for a neighbourhood shopping centre located in the Castle Downs community (NW Edmonton)?
2. What is the appropriate vacancy rate for the 2011 assessment year to establish the assessment value for the shopping centre in the NW area of Edmonton?

LEGISLATION

Municipal Government Act, R.S.A. 2000, c. M-26 (MGA);

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's witness presented a detailed appraisal report as the primary evidence (C-1, 103 pages). This included the Complainant's arguments based on income approach as well as direct sales comparison.

The appraisal report included tables of the following:

1. Eleven sales of comparable shopping centres for the year 2010 (C-1, page 15). The Complainant stated that the sales #2, 3 & 7 were the best comparables to the subject property. The comparables presented by the Complainant had an average unit sale price of approximately \$113 per square foot.
2. Eight lease rates in north Edmonton (C-1, pages 16 & 40). The lease rates ranged from a low of \$4.50 per square foot to a high of \$30 per square foot. The Complainant argued that several of the retail units had no exterior exposure and would not command lease rates equal to the units with exterior exposure.
3. Average net incomes in respect of eleven shopping centres in the city of Edmonton. The Complainant was of the opinion the best comparables were #1, 2 & 9 with a reported net income range of \$10.00 to \$16.74 per square foot (C-1, pages 17 & 40).
4. Actual lease rates for the subject property. The lease rates ranged from \$3 to \$12 per square foot with an average of \$9 per square foot (C-1, page 39).
5. Projected lease rates of the subject property (C-1, page 41). The Complainant stated that the applicable lease rates should be between \$8 and \$12 per square foot. The Complainant's report also concluded that a market lease rate range of \$8 to \$14 per square foot would be appropriate for the subject property.
6. Reconstructed operating expenses in respect of the subject property for the years 2008, 2009 and 2010 (C-1, page 42).
7. Capitalization rates in respect of eleven shopping centres. The capitalization rates in respect of these comparable properties ranged from 6.47% to 8.51%, with an average of 7.45%. The Complainant advised the Board that the comparables at #2, 9 & 11, were closest to the subject property in terms of location. The average capitalization rate for these three comparables was approximately 8.09%. The Complainant concluded that a capitalization rate of 8% to 8.25% was reasonable (C-1, page 47).
8. Sales of three similar properties comparable to the subject (C-1, page 49). These sales occurred in early 2010 and the sales prices ranged between \$96 and \$129 per square foot.

Sale #1, at \$96 per square foot, was the best indicator of value and sale #3, at \$121.73 per square foot, was the weakest indicator of value.

The Complainant advised the Board that based on 2010 reports by CB Richard Ellis and Cushman Wakefield, the retail vacancy rate in Edmonton region hovered around 2.7% to 3.0%. The Complainant further stated that the Edmonton office vacancy rate was near 11% (C-1, page 17).

In the Complainant's summation, the Complainant argued that the actual vacancy rate stood at 21%. In addition, the Complainant advised the Board that the subject property was unable to attract any major national brand tenants.

The Complainant advised the Board that the vacancy rate has increased dramatically due to a number of tenants moving out of the subject property. The Complainant advised the Board that the subject property was under severe pressure due to new developments in the area.

The Complainant highlighted that the subject property is nearing functional obsolescence in view of newer extensive retail and commercial developments in the Namao Centre and the redeveloped Castle Downs Shopping Centre.

The Complainant objected to the Respondent's assertion that the higher vacancy rates were due to poor management of the subject property.

Under argument, the Complainant stated the shopping centre was for sale.

POSITION OF THE RESPONDENT

1. The Respondent presented the Board with a detailed legal and assessment brief of 167 pages (R-1).
2. The Respondent advised the Board that provincial legislation requires that all properties be assessed on the basis of mass appraisal. Further, the income approach is the best method of establishing valuation estimates in respect of the commercial properties if sufficient income data is available.
3. The Respondent argued that the prominent revolving sign board would offset any lack of exterior exposure in respect of the interiors retail units and no rate differential was warranted.
4. The Respondent provided a valuation summary in respect of the subject shopping centre (R-1, page 22). This was based on a market rate of \$11 per square foot in respect of the grocery store, \$12 per square foot for the retail space, \$13.50 per square foot for the office space, a 1% vacancy rate for the anchor tenant, a 5% typical vacancy rate for the retail and office space, and a 9% capitalization rate, resulting in the 2011 assessment of \$7,580,000 for the subject property.
5. The Respondent challenged the Complainant's appraisal (C-1) on a number of issues such as:

- a. The appraisal did not include the actual operating statement for the subject.
 - b. In the direct comparison table (C-1, page 49), the appraisal report had inappropriately compared properties of dissimilar condition i.e. 'fair' and 'average' and no adjustments were made for the differences.
 - c. The comparable marked 'Index #2' had a vacancy rate of 64% at the time of its sale which could have had a substantial impact on its market valuation.
 - d. The exposure of one of the comparable properties had been misstated.
6. The Respondent argued that the subject was conveniently accessible from all directions in the neighbourhood and enjoyed excellent exposure on a very busy road (Castle Downs Road). Such exposure was supplemented with a large revolving sign at the north end of the property.
 7. The Respondent also provided a table showing sales of 22 shopping centres within the Edmonton area (R-1, page 34). The average unit price per square foot was \$233, compared with \$118 per square foot assessment for the subject. In addition, the average capitalization rate was 7.44%.
 8. The Respondent presented to the Board a test scenario utilizing the Complainant's projected operating statement and the Respondent's typical vacancy rates. The resulting hypothetical assessment value came within 3% of the 2011 assessment (R-1, page 32). The same scenario modified with the use of Respondent's market rate of \$11 per square foot for the grocery store produced an assessment within 2% of the 2011 assessment.

DECISION

The decision of the Board is to confirm the 2011 assessment of the subject property at \$7,580,000 as fair and equitable.

REASONS FOR THE DECISION

1. Both the Respondent and the Complainant agreed that the income approach was the preferred method of evaluation for the subject property.
2. The Board was persuaded by the Respondent's argument challenging the validity of the sales comparables used in the Complainant's appraisal.
3. The Board found that the sales comparable (Index #1) purchased by the Muslim Association of Canada Inc. (C-1, page 49), does not represent a good comparable as it was not acquired for investment purposes.
4. The Board was persuaded by the Respondent's reasoning that the sales comparable (Index #2), (C-1, page 49), did not represent a good comparable as it was 64% vacant at the time of sale and the purchaser intended to use the vacant space for their own use.
5. While the Respondent based the 2011 assessment on the typical market rate of \$11 per square foot rate for the grocery space, the Complainant did not provide sufficient evidence in support of the requested \$10 per square foot rate.

6. The Board found that the Complainant failed to provide sufficient and compelling evidence to shift the onus regarding vacancy rates. The Board found it very confusing that while the Complainant stated the actual vacancy rate to be 25%, the evidence presented (C-1, page 43) showed the retail vacancy rate to be near 3%, the office vacancy rate to be near 11%, and approximately 21% vacancy for the subject complex as of the effective date. Further, the Respondent considered a vacancy rate of 8% to be appropriate and yet argued for a 10% vacancy rate for the 2011 assessment.
7. The Board noted that the Complainant used a capitalization rate of 8% and the Respondent used 9%, whereas the survey, by the Respondent, of 22 shopping centres in the area showed an average of 7.44%. The Board notes that if the 7.44% average or the 8%, as recommended by the Complainant was utilized, it would result in a much higher 2011 assessment.
8. The Board was sympathetic to the Complainant's plight regarding the actual high vacancy rate. While the Respondent stated that this was attributable to management, the Board found no evidence to support this assertion.
9. While the Board noted that the Complainant stated the shopping centre was for sale, there was no evidence to show the property was listed. Assuming the property, was in fact listed for sale, the Board would have appreciated the documentation.
10. In light of the above, the Board concluded that the 2011 assessment is fair and equitable.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 9th day of August, 2011, at the City of Edmonton, in the Province of Alberta.

Robert Mowbrey, Presiding Officer

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, R.S.A. 2000, c.M-26.
