

November 30, 2012

AEC International Inc.  
#1120, 10201 Southport Road SW  
CALGARY, AB T2W 4X9

Dear Sirs:

Re: Composite Assessment Review Board Hearing on Roll Number 0058260

Attached please find the Okotoks Composite Assessment Review Board Order for the hearing held regarding the above-noted roll number.

Please do not hesitate to contact me if you require any further information.

Sincerely,



Linda Turnbull  
Assessment Review Board Clerk  
[lturnbull@okotoks.ca](mailto:lturnbull@okotoks.ca)

c: Town of Okotoks Assessment Services  
Minister of Municipal Affairs



**Mixed Sources**  
Product group from well-managed  
forests, and other controlled sources  
[www.fsc.org](http://www.fsc.org) Cert no. SW-COC-002397  
© 1996 Forest Stewardship Council



## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

**IN THE MATTER OF A COMPLAINT** filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the Municipal Government Act (the Act), Chapter M-26 Section 460, Revised Statutes of Alberta (2000).

### **BETWEEN:**

Walmart Canada Corp. - Complainant

- and -

The Town of Okotoks - Respondent

### **BEFORE:**

P. Colgate, Presiding Officer  
D. Howard, Member  
R. May, Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered in the 2011 Assessment Roll as follows:

| <b>Roll Number</b>  | <b>Address</b>           | <b>Assessment</b> |
|---------------------|--------------------------|-------------------|
| Roll Number 0058260 | 500 201 Southridge Drive | \$24,537,000      |

This complaint was heard by the CARB on the 8<sup>th</sup> day of November, 2012 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- AEC International (Agent for the Complainant) – Jason Luong and Brigitte Soulier

Appearing on behalf of the Respondent:

- Paul Huskinson

Attending for the ARB:

- Linda Turnbull, ARB Clerk and Dianne Scott, Assistant

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

### **Preliminary Matters:**

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

At the outset of the hearing, the Complainant requested a corrected submission be entered into evidence as the original document submitted for the hearing was incomplete and missing a number of pages. The Respondent had no objection to the substitution of the corrected document and the Board accepted the corrected submission for the hearing.

No additional preliminary matters were raised and the Board proceeded to hear the merits of the complaint.

### **Property Description and Background:**

The complaint before the Board is with respect to a retail property identified as a Walmart store located at 500 201 Southbridge Drive, Okotoks, Alberta.

The current assessment of \$24,537,000.00 was determined based upon the following areas and parameters:

- Retail – Grocery - 50,064 square feet @ \$16.00/square foot
- Retail – Dry Goods - 113,800 square feet @ \$11.00/square foot
- Retail – Auto Service - 3,065 square feet @ 11.00/square foot
- Retail – Garden Centre – 3,000 square feet @ \$11.00/square foot
- Vacancy Rate – 3.0%
- Operating Costs Adjustment - \$5.75/square foot
- Capitalization Rate – 8.0%

### **Issues:**

In argument, the Complainant submitted three issues for the Board's consideration:

The subject property had been assessed in excess of its fair and equitable value.

The rental rate applied to the grocery component of the subject property is unfair at \$16.00 per square foot and over-estimates the market income earning potential of the subject property. A rental rate of \$11.00 per square foot or less would be fair.

The Assessor has applied an incorrect area for the grocery component. AutoCad plans show the area of the grocery component to be a total of 30,858 square feet instead of 50,064 square feet as applied by the Town of Okotoks.

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

### **Board's Findings in Respect of Each Matter or Issue:**

In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

Both the Complainant and the Respondent submitted background material in the form of photographs, site maps and plans.

### **Summary of Positions:**

#### **Complainant's Position**

The Complainant argued that all space within the Walmart operation should be assessed at the same market rental rate. It was the Complainant's argument that the separation of the "grocery" and "dry goods" components was unique to the Town of Okotoks and not found in other Alberta Communities. (C1, Pg. 3)

The Complainant submitted a lease list of twenty-six (26) big box properties, which included Walmart and Home Depot operations to support their argument that big box operations throughout Alberta are consistently assessed based upon a single rental rate.

The Complainant noted for the Board that seventeen (17) of the leases were Walmart stores assessed with a single rental rate. The complainant also noted only the Walmart store in Medicine Hat, besides the one located in the Town of Okotoks, had defined component areas, but they were assessed at a single rental rate. (C1, Pg. 14)

The Complainant argued that in light of the "limited amount of market and assessment information available in Okotoks", it was reasonable to expand the search area to include leasing information from other municipalities. The Complainant presented findings that big box stores throughout Alberta leased for rates of approximately \$8.00 per square foot. Further, it was argued that for Walmart Stores in Calgary, the rental rate applied by the City of Calgary was a single rate of \$10.00 per square foot for the total area. (C1, Pg. 3) The Complainant submitted a chart of big box operations in Alberta, which was claimed to represent operations by Home Depot, Costco, Rona and Walmart and Walmart Superstores. The resulting analysis of the leases indicated rental rates per square foot of an average of \$7.66 and a median of \$8.00. (C1, Pg. 16)

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

In its legal section, the Complainant submitted a list of decisions from 2007 to 2010, with the related market rental rates per square foot, for locations in the Calgary and Airdrie market areas. (C1, Pg. 18-19) It was the Complainant's argument that these decisions supported the requested rate of \$10.00 per square foot for the subject property.

With respect to the size of the Walmart store and specifically the grocery component, the Complainant submitted a copy of an AutoCad drawing which provided areas only for the grocery component. (C1, Pg. 10)

The Complainant concluded its presentation by requesting a revised assessment of \$19,515,000, or \$119 per square foot, based upon the following area and parameters:

- 163,864 square foot total area
- \$10.00 per square foot
- 3% vacancy rate
- \$5.75 Operating Costs Adjustment per square foot
- 8% capitalization rate

### **Respondent's Position**

The Respondent commenced its presentation by acknowledging assessment for the subject property had been reviewed with a resulting revision to the assessed value, reducing the assessment to \$24,020,200 or \$146 per square foot. (R1, Pg. 5)

The revised assessment of the subject property was determined based upon the following components and parameters:

- Retail – Grocery - 40,458 square feet @ \$16.00/square foot
- Retail – Dry Goods – 119,614 square feet @ \$11.00/square foot
- Retail – Auto Service - 4290 square feet @ 11.00/square foot
- Vacancy Rate – 3.0%
- Operating Costs Adjustment - \$5.75/square foot
- Capitalization Rate – 8.0%

The Respondent submitted a Walmart Floor Plan Sketch (R1, Pg. 9), the dimensions which the Respondent obtained through an onsite inspection of the subject property.

The Respondent argued the rates applied to the subject property were in line with “comparable typical assessment retail rates for space in Okotoks of similar size and utility”.

## OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M

A table of six (6) comparable properties and the subject property was submitted. (R1, Pg. 30) The table provided details of each property – address, year of construction, area, use, assessment details and assessment parameters. The Respondent noted the different rates applied for grocery space, dry goods space and auto service. (R1, Pg. 21)

|                 |                       |                                       |
|-----------------|-----------------------|---------------------------------------|
| - No Frills     | - retail grocery      | 30,761 sq. ft. @ \$14.00 per sq. ft.  |
| - Safeway       | - retail grocery      | 42,213 sq. ft @ \$15.00 per sq. ft.   |
| - Sobeys        | - retail grocery      | 42,792 sq. ft. @ \$16.00 per sq. ft.  |
| - Canadian Tire | - retail auto service | 6,305 sq. ft. @ \$12.00 per sq. ft.   |
| - Canadian Tire | - retail dry goods    | 41,050 sq. ft. @ \$15.00 per sq. ft.  |
| - Home Depot    | - retail dry goods    | 83,935 sq. ft. @ \$12.00 per sq. ft.  |
| - Costco        | - retail dry goods    | 150,963 sq. ft. @ \$11.00 per sq. ft. |

The Respondent submitted a copy of a City of Calgary Assessment Business Unit analysis of supermarket leases, dated June 21, 2012. (R1, Pg. 44) The Respondent argued the lease analysis supports the assessment rates applied to the three supermarkets in the Town of Okotoks as presented in the list above.

### Complainant's Rebuttal

The Complainant rebutted the Respondent's submission on three main points, firstly the lack of market evidence to support the subject property's assessment. Secondly, the Respondent has incorrectly assessed the property based upon a value in use and not the fee simple value. Thirdly, the Town of Okotoks has inequitable assessment of the subject property. (C1, Pg. 1 – 49, Rebuttal)

Under the first point in the rebuttal, the Complainant argued the Respondent had failed to provide any rate analysis or market evidence, specific to the Town of Okotoks, to support the rates applied. The Respondent claimed its rates were derived "using logic and judgement". The Respondent has used lease information obtained from the City of Calgary to substantiate the rates applied to the grocery stores located in the local market. The Complainant noted the City of Calgary had four different rates for supermarkets: \$23.00, \$17.00, \$13.00 and \$9.00. The Complainant noted that the Respondent had provided no analysis to support the Town of Okotoks rates of \$14.00, \$15.00 and \$16.00. The Complainant further noted the evidence submitted by the Respondent failed to include four Walmart superstores located in the City of Calgary that were assessed at a rate of \$10.00 per square foot for the total area. The Complainant provided supporting documentation for the Walmart superstores.

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

The second rebuttal point addresses breaking the total area of the structure into components based upon the specific use of the areas – dry goods, groceries and auto service. The Complainant argued that there are no wall partitions to separate these sections. The Complainant argued that under an income approach analysis one would examine the total income produced by all areas to derive a market rental rate, especially when there is a lack of income and expense information on separate areas. The Complainant argued that under the Municipal Government Act, Section 289, and Section 2(b) of Matters Relating to Assessment and Taxation regulation (MRAT), the assessment must be an estimate of the value of the fee simple estate. The Complainant argued it is the income generated by the property, not how the area is utilized, that is important.

The third rebuttal point addresses the inequity of assessment between the subject property and the comparables provided by the Respondent. The Complainant argued that of the Respondent's comparables, the property most similar to the subject property is Costco. It was noted that although Costco has a "significant grocery" component, the total area has been assessed at a single rate of \$11.00 per square foot. The Complainant argued that the grocery component in the subject property has been assessed at a higher rate per square foot than found in Costco and has "created an unfair balance to the tax burden".

### **Findings and Reasons:**

#### **Issues 1 and 2**

The Board found the Complainant had presented extensive information as to the assessment process in a number of Alberta municipalities, which assess Walmart stores on their total area and apply a single rate. It was brought forward that only one location, the City of Red Deer, currently used differing rates for components of the Walmart store, but this practice was to be discontinued in 2013.

The Board found the Complainant had presented rates applied to Walmart stores throughout Alberta, which ranged from \$7.35 to \$11.75 per square foot, with an average rate of \$9.94 and a median rate of \$10.00. The Complainant had requested a rate of \$10.00 per square foot but presented no market evidence from the Town of Okotoks to support the rate in the local market.

The Complainant presented numerous decisions from the Assessment Review Board, the Municipal Government Board, the Composite Review Board and Local Assessment Review Boards for 2007 to 2010 to support their requested rates. The Board took note that there were no decisions presented from 2011 and there was only one decision in the Town of Okotoks, in 2010, which supported a rate of \$11.00 per square foot. The Board found older decisions may not be indicative of the current market value found in the Town of Okotoks and placed less weight on the rates used.

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

The Board found the presentation of the Respondent was lacking in local market evidence to support the rates applied to the subject property. Under questioning by the Complainant and the Board, the Respondent stated the values were based upon his “experience and judgement”. The Respondent further stated he was a member of the Alberta Assessors Association and the International Association of Assessing Officers and was therefore qualified to make the determinations of value.

While the Board appreciated the stated qualifications of the Respondent, the Board must look to the regulations as set out under the MGA, specifically Section 2 of MRAT. The section states:

2. An assessment of property based upon 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.

The Board found the Respondent had presented no market evidence specific to the Town of Okotoks, but had provided market evidence from the City of Calgary to support the local rates. The Respondent submitted no market analysis to show how the local rate was derived from the City of Calgary rates.

The Board found the Respondent, when questioned on the comparison of the Costco store and the Walmart store, was unable to show the Board the difference between the two interior finishes as the photographs provided were taken at the time of construction. When questioned about the difference in assessment methodologies, as both locations provided grocery services, the Respondent stated he regarded the equipment located in the Costco as chattels and not assessable, unlike the installation of the equipment in the Walmart store.

After a review of the evidence, the Board found for the Complainant and accepts the argument the Walmart store should be assessed as one area with one rate per square foot.

The Board sets the rental rate at \$11.00 per square foot.

### **Issue 3**

The Board found the Complainant had provided insufficient evidence to support the requested total area of 163,864 square feet. The only evidence presented was the AutoCad document that provided the areas for spaces recognized as part of the grocery component, but no evidence was shown regarding the total area of the building.

The Respondent testified he visited the Walmart store and checked the area of the store’s components and determined the new areas and the total square footage. This area was part of a recommendation presented to and rejected by the Complainant.

## **OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M**

This Board is not in a position to determine which area is correct and therefore returns this issue to the Respondent and the Complainant to resolve the discrepancies between the two areas presented.

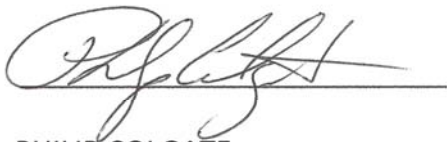
The Board was presented with a complaint, with a stated area of 163,864 square feet, and bases any decision on the original area used in the assessment.

### **Board's Decision:**

Based upon the reasons given, the Board set the rental rate for the subject property at \$11.00 per square foot and amends the assessment to \$21,502,000.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 29<sup>th</sup> day of November 2012.

A handwritten signature in black ink, appearing to read 'Philip Colgate', written over a horizontal line.

PHILIP COLGATE  
Presiding Officer

## OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/09/2012-M

**An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:**

*470(1) 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.*

*470(2) 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).*

*470(3) 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 ADMINISTRATIVE USE

| Subject | Property Type | Property Sub-Type | Issue           | Sub-Issue   |
|---------|---------------|-------------------|-----------------|---|
| CARB    | Retail        | Big Box Store     | Income Approach | - Net Market<br>Rent/Lease Rates<br>- Leasable Area |