

**CITY OF ST. ALBERT
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(4).

between:

AEC International Inc., COMPLAINANT

and

The City of St. Albert, RESPONDENT

before:

L. Wood, PRESIDING OFFICER

M. Saxton, MEMBER

N. Therrien, MEMBER

This is a complaint to the City of St. Albert's Assessment Review Board in respect of Property assessment prepared by the Assessor of the City of St. Albert and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 124539

LOCATION ADDRESS: 750 St. Albert Road

FILE NUMBER: ARB- 04- 2010

ASSESSMENT: \$11,893,000

This complaint was heard on 1st day of December, 2010 in the Council Chambers located on the 3rd Floor of St. Albert Place, 5 St. Anne Street, St. Albert, Alberta.

Appeared on behalf of the Complainant:

- Mr. J. Luong

Appeared on behalf of the Respondent:

- Mr. S. Bannerman

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

At the commencement of the hearing, the Complainant raised a preliminary matter in regards to the late filing of disclosure by the Respondent for this hearing (Exhibit C1 page 3 & 4). The Respondent filed the disclosure one day past the deadline on November 17, 2010 as opposed to November 16, 2010. He also failed to send the complete submission, which was sent in 3 parts, to one of the representatives at AEC International Inc. The Complainant indicated that the Respondent failed to file the disclosure in accordance with section 8(2)(b) of *Matters Relating to Assessment Complaints Regulation* AR 309/2009 (*MRAC*) and as such, the Board should not hear it in accordance with section 9(2). However, the Complainant indicated that he merely wanted to bring this matter to the Board's attention and was ready to proceed with the hearing without further delay.

The Respondent agreed that he had filed the disclosure late due to a miscalculation of "at least 14 days before the hearing date" in which he had misinterpreted the number of days in accordance with the *Interpretation Act* (Exhibit R1 pages 1-2). He also noted that the Clerk of the Assessment Review Board made the same error. However, given the parties open and cordial discussions of this complaint, with an effort of resolving it prior to the hearing, he requested that the Board allow the disclosure despite it being one day late in accordance with section 10(2) of *MRAC*. He also provided a Calgary Composite Assessment Review Board decision CARB 0965/2010P in which the Board granted a party's request to allow an extension of time to file disclosure (Exhibit R1 pages 17-23).

After a brief recess, the Board indicated to the parties that its preference was to proceed with the hearing and to allow the Respondent's disclosure. The Complainant appeared to have abandoned his position and conceded that he was not prejudiced if it was admitted into evidence. The Board stated that its decision was contingent, in part, on obtaining the Complainant's written consent to the disclosure being admitted in accordance with section 10(3) of *MRAC*. The Board advised the parties that it would consider allowing the information that was disclosed pursuant to sections 299 and 300 of the *Municipal Government Act* in the event that the written consent was not provided by the Complainant as the parties had indicated earlier that they would not object to it being admitted into evidence. However, the Complainant provided his written consent on the Respondent's disclosure (Exhibit R2); therefore, the Board did not pursue that option.

Property Description:

The subject property is known as the St. Albert Home Depot. It is a large, freestanding box store, comprised of a net building area of 85,180 sq. ft. It also has a garden centre comprised of 18,758 sq. ft., three separate storage areas that total 5,367 sq. ft., and an entry canopy of 3,850 sq. ft. The building was constructed in 2005. It is located on 8.20 acres of land. The land is zoned CC, Corridor

Commercial.

Issues:

1. The rental rate for the subject property should be reduced from \$11.50 psf. to \$10.00 psf.
2. The capitalization rate for the subject property should be changed from 7.75% to 8.00%.

Complainant's Requested Value: \$10,019,000

Legislation:

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, Chapter M-26

1(1) (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;

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

(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.*

293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

(2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
- (c) any other information prescribed or otherwise described in the regulations.*

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the

assessor has in the assessor's possession or under the assessor's control:

- (a) a description of the parcel of land and any improvements, to identify the type and use of the property;*
- (b) the size of the parcel of land;*
- (c) the age and size or measurement of any improvements;*

- (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;*
- (e) any other information prescribed or otherwise described in the regulations.*

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

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.*

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

- (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.*

INTERPRETATION ACT, R.S.A. 2000, Chapter I-8

22(3) *If an enactment contains a reference to a number of days expressed to be clear days or to “at least” or “not less than” a number of days between two events, in calculating the number of days, the days on which the events happen shall be excluded.*

MATTERS RELATING TO ASSESSMENT COMPLAINTS REGULATION 309/2009

8(1) *In this section, “complainant” includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.*

(2) If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,*
 - (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and*
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;*
- (b) the respondent must, at least 14 days before the hearing date,*
 - (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and*
 - (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent’s evidence;*
- (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

10(1) A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).

(2) Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b) or (c).

(3) A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION 220/2004 (with amendments up to and including Alberta Regulation 330/2009)

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.

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

4(1) The valuation standard for a parcel of land is

a) market value,

6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

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

1. The rental rate for the subject property should be reduced from \$11.50 psf to \$10.00 psf.

The Complainant submitted that the only issues in contention are the rental rate of \$11.50 psf and the capitalization rate of 7.75% that were used to assess the subject property. He was in agreement that the income approach is the preferred method of valuation as this is a revenue generating property that does not often sell in the market place. He was also in agreement with the 3% vacancy allowance, 2% non-recoverable allowance and 1% reserves allowance that were applied to the subject property's assessment (Exhibit C2 pages 3-5, 9).

The Complainant submitted that the subject property is referred to as a big box store. This type of property is commonly classified as an anchor tenant that includes other big box stores such as Zellers and Wal-Mart. These anchor tenants have bargaining power when negotiating the terms of their leases with fixed rates (Exhibit C2 page 6). Anchor tenant leases are usually long term leases

of 15- 20 years with no incremental increases (Exhibit C2 page 16). The Complainant submitted a list of Sears, Hudson Bay and Zellers stores located throughout Canada whose leases commenced between 2000- 2008. The terms of the leases ranged from 5- 25 years, with lease rates between \$2.59- \$7.00 psf (Exhibit C2 page17).

The Complainant submitted a lease analysis of big box stores throughout Alberta to support his request of a \$10.00 psf rental rate (Exhibit C2 page 20). One of the comparables is located in St. Albert, two are located in Edmonton, eight are located in Calgary and one is located in Lethbridge. The Complainant indicated that it is preferred to rely on comparable rents from other box stores in different locations as opposed to rental data of non- box stores, or non- anchor tenants. The Complainant reviewed pertinent sections of that Chart at the hearing which is set out, in part, below:

Lease Analysis- Big Box

Store	Shopping Centre	Age	Area	Lease Start	Lease Term (Years)	Face Rent psf
National Retailer	Deerfoot	5 yrs	132,375	2004	20	\$6.85
National Retailer	South Trail	8 yrs	130,224	2002	20	\$7.78
National Retailer	Royal Oak	6 yrs	133,000	Signed 2002, Began 2004	20	\$10.00
Zellers	Forest Lawn	43 yrs-reno'd	96,132	2006	15	\$4.00
Zellers	Shawville	13 yrs	122,616	1996	15	\$7.00
Zellers	Signal Hill	n/a	112,468	1997	15	\$8.00
National Retailer	Lethbridge-South	8 yrs & 2 yrs	193,115	2001	20	\$8.24
National Retailer	Clareview Town Centre	6 yrs	125,079	2004	20	\$8.46
National Retailer	West End	5 yrs	127,405	2004	20	\$8.90
National Retailer	St. Albert	7 yrs & new	129,121	2002	20	\$7.05
The Brick	Calgary	n/a	74,074	2004	n/a	\$8.00
					Average	\$7.66
					Median	\$8.00
National Retailer	Macleod Trail	43 yrs	126,720	Signed 1966 renewal 2007 for 5 years	20	\$7.15

(Note: comparable #12 was withdrawn at the hearing).

The Complainant indicated that this requested market rent of \$10.00 psf is also supported by the sale of an Edmonton box store, located at 9717- 21 Avenue, which was a former Wal-Mart. It is comprised of 129,700 sq. ft., located on an 11.98 acre site, in South Edmonton Common. It was sold in January, 2008 for \$15,000,000, reportedly by the developer as part of a land deal for the new Wal- Mart (Exhibit C2 pages 62- 157). The Complainant also submitted the \$10.00 rental rate was also supported by the recent sale of a Brick/United Furniture Warehouse in Calgary which shows a reported lease rate of \$8.00 psf. That property, located at 3451 Sunridge Way NE, sold for \$10,250,000 on January 4, 2010. However, the Complainant conceded at the hearing, as this is not

an arm's length sale, it should be excluded from the analysis (Exhibit C2 pages 35 & 36).

The Respondent submitted that all retail stores in St. Albert were assessed based on the income approach to value in 2009. He acknowledged that leasing information is limited in St. Albert for big box stores and they are typically owner occupied so the City looked at smaller CRU tenants. However, the subject property's rental rate of \$11.50 psf is based on the following 6 comparables that the Respondent submitted in a Chart entitled "Market Rent Comparators" which is reproduced below (Exhibit R2 page 12):

Market Rent Comparators

Comparator	Description	Type	Store Area (ft ²)	Lease Rate	Effective Date
Rental Survey-Frost & Assoc.	St. Albert Wal-Mart	Big Box	194,159	\$11.00- \$12.00	01-Jul-09
Rental Survey-Frost & Assoc.	St. Albert Home Depot	Big Box	85,180	\$11.50- \$12.50	01-Jul-10
Bourgeois Appraisal	St. Albert Home Depot	Big Box	85,180	\$14.50	01-Jul-08
Lease Information	Westmount Home Depot	Big Box	90,908	\$13.00- \$14.00	2008
Gettel Appraisals Ltd.	St. Albert Wal-Mart	Big Box	194,159	\$13.00	01-Jul-07
Frost & Associates Appraisal	St. Albert Canadian Tire	Big Box	101,029	\$11.75	01-Jul-08

The third party rental surveys of the St. Albert Home Depot and Wal-Mart by Frost and Associates indicate a rental rate of \$11.50- \$12.50 psf and \$11.00- \$12.00 psf respectively (Exhibit R2 Addendum A & B). There is a reference in both of these surveys to the new Home Depot in the Westmount Shopping Centre. The Respondent submitted this is an excellent indicator of an arm's length lease for a Home Depot. The 20 year lease would commence upon the completion of the construction at \$13.00 psf and escalating to \$14.00 psf fully net for an area of 90,908 sq. ft.

The Respondent also presented an appraisal of the subject property conducted by Bourgeois & Company in the preparation of the 2008 assessment which had suggested a market rental rate of \$14.50 psf (Exhibit R2 Addendum C). The Respondent submitted that an appraisal was done for the neighbouring Wal-Mart store in 2007 by Gettel Appraisals Ltd. which suggested a market rental rate of \$13.00 psf (Addendum D). The Respondent also submitted that the Canadian Tire store in St. Albert that has 101,029 sq. ft. was appraised by Frost & Associates in 2008 at a market rental rate of \$11.75 psf (Addendum E).

The Respondent also submitted a Municipal Government Board decision MGB 080/05 which was the appeal of the Wal-Mart store in St. Albert (Addendum F). The Board determined that the fair and equitable market rent in 2003 for big box stores at that time was \$9.50 psf which confirmed the rate that was applied by the assessor. The Respondent indicated that market rents have increased substantially since that time.

The Board finds that there was insufficient evidence to support a reduced market rent from \$11.50 to \$10.00 psf in this instance. The Board finds that the Complainant failed to provide reasonable

comparable properties that were similar to the subject property. The Board was not convinced that the sale of the former Wal-Mart property located in South Edmonton Common was truly a non-arms length sale. Moreover, the Complainant's request of \$10.00 psf appears somewhat arbitrary and unsupported since his market rents indicate a median of \$8.00 psf. It is unclear to the Board how the rate of \$10.00 psf was derived although the Complainant did acknowledge at the hearing to request a reduction to \$8.00 psf would be too aggressive.

The Board preferred the comparables presented by the Respondent as they were more similar to the subject property. Moreover, the comparables establish a range of values and the subject property's assessment falls within that range. However, the Board does not agree that the Home Depot store located in the Westmount Shopping Centre (a mall) is similar to the subject property (a free standing box store) and therefore placed little weight on that comparable.

2. The capitalization rate for the subject property should be changed from 7.75% to 8.00%.

The Complainant submitted that the capitalization rate for the subject property should be 8.00% as opposed to 7.75%. The Complainant submitted that a survey of retail property sales from Calgary in 2009 was undertaken and showed that the rates ranged between 8.30%- 8.70% which indicate an average of 8.45% and a median of 8.35% (Exhibit C2 pages 24 & 26). In addition, the Complainant indicated that he looked to neighbouring municipalities for a comparison of capitalization rates used in the 2010 assessments which averaged a capitalization rate of 8.25% (Exhibit C2 page 24).

He also gave consideration to the study undertaken by Gettel Appraisals Ltd. which reviewed the sales of 23 retail properties, both shopping centres and free standing box stores, taken from the Edmonton, Sherwood Park and St. Albert area which indicate an average capitalization rate of 7.35% and a median of 7.41%. However, he indicated of those 23 sales comparables, only 3 are most similar to the subject property in terms of size and comparability and their average capitalization rate was 9.61% (Exhibit C2 pages 24 & 25). The Complainant also provided second quarter reports of 2009 for capitalization rates for retail in Calgary in reports from Colliers International and CB Richard Ellis (Exhibit C2 pages 27, 54, 56).

The Complainant submitted that based on the capitalization rate studies, the closest comparable assessment and sales indicate a capitalization rate of 8.00%. This rate takes into consideration the subject property's characteristics and accounts for the high risk associated with obtaining tenants to occupy this type of space. The Complainant referred to the former Wal-Mart store in South Edmonton Common property that had remained vacant between 2007- 2009 and it now houses 3 tenants. As well, there is a national retail store located in Medicine Hat which has remained closed since 2008 and has yet to be marketed in 2010. He indicated that a loss of revenue during a 2 year period for an improvement that has typically a 35 year like span is quite significant (Exhibit C2 page 28).

The Respondent submitted that the capitalization rate of 7.75% was based on 15 transactions of strip shopping centres in Edmonton in 2009 with an average capitalization rate of 7.95% and a median of 7.79% (Exhibit R2 pages 13 & 14). The City of St. Albert had requested a capitalization rate study for the period of July 1, 2009 which was provided by Harrison Bowker Real Estate Appraisers Ltd. They indicated a capitalization rate between 7.2%- 8.6% and a weighted average of 8.00% is reasonable for the St. Albert area (Addendum H).

The Respondent stated that an 8.00% capitalization rate is mid point in the range and based on the subject property's location, strength of its tenancy, age and condition, it is superior to other box

stores in the St. Albert area; therefore, a minor reduction to 7.75% was warranted.

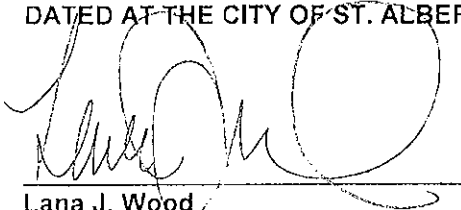
The Respondent also indicated that the 615-665 St. Albert Road (known as Citadel Village) which is an arterial, non- anchored complex located across from Wal- Mart. It is comprised of 51,028 sq. ft., constructed in 2007. It sold on January 6, 2010 for \$17,626,666 with a 7.44% capitalization rate (Addendum I).

The Board finds the capitalization rate of 7.75% is supported based on the evidence presented by both parties. The Board also found the Respondent's explanation for the 7.75% capitalization rate reasonable. Although the Board could have been persuaded that an 8% capitalization rate is appropriate in this instance, there was insufficient evidence to support that change.

Board's Decision:

The decision of the Board is to confirm the 2010 assessment for the subject property at \$11,893,000.

DATED AT THE CITY OF ST. ALBERT THIS 24th DAY OF DECEMBER 2010.



Lana J. Wood
Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:

NO.	ITEM
Exhibit C1	Submission of the Complainant- Jurisdictional Matter
Exhibit C2	Evidence Submission of the Complainant- Volumes 1 & 2
Exhibit C3	Legal Analysis of the Complainant- Volume 3
Exhibit C4	Rebuttal Submission of the Complainant
Exhibit R1	Response to Jurisdictional Matter- City of St. Albert
Exhibit R2	Assessment Brief of the City of St. Albert

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.*