



REGIONAL MUNICIPALITY
OF WOOD BUFFALO

Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 006-2011

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Canadian Tire Corporation Ltd. - Complainant

- a n d -

Regional Municipality of Wood Buffalo - Respondent

BEFORE:

Members:

J. Noonan, Presiding Officer

S. Odemuyiwa, Member

L. Nordbye, Member

Board Administration:

A. Hawkins, Clerk for the Assessment Review Board

A hearing was held on August 18, 2011 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

Roll Number: 71032980

Municipal Address: 1 Hospital Street, Fort McMurray

Assessment: \$12,764,500.

CARB file: 11-084

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject Canadian Tire store was built in 1996 and contains 74,155 sq.ft. of retail area, 7312 sq.ft. of auto service area and 2911 sq.ft. of mezzanine office space. The assessment was prepared using the capitalized income approach, and the attributed annual lease rates for the different areas were respectively \$12, \$23, and \$1. After 5% deductions for vacancy and management/structural, the retail and auto service net operating incomes were capitalized at 7.5% and the mezzanine income at 8%, the same rates as applied to similar property types

elsewhere in the Municipality. The improvement also has some 8700 sq.ft. of mezzanine storage space to which no rental value was ascribed. The site area is just under 5 acres, at 217,438 sq.ft., and is neighboured by other big box stores and retail development, comprising the single retail power centre in Fort McMurray.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make decisions under Part 11 of the Act. At the commencement of the hearing the CARB was presented an e-mail dated August 15, 2011, advising that the Complainant's agent, AEC International, had elected not to make a personal appearance at the hearing and requested the CARB to rely upon its written submissions and rebuttal document. As allowed by section 16(1) of the *Matters Relating to Assessment Complaints Regulation (MRAC)* 310/2009, personal attendance is not required and a party may file a written presentation. The Respondent was represented by Mr. R. Sweeney, Assessor, and the hearing proceeded.

PART C: ISSUES

The complaint form identified the following issues:

- As similar and comparable properties are assessed at lower rates, the subject assessment is overstated and inequitable.
- A section of the subject is assessed at a rental rate of \$27. To reflect the fee simple interest, the entire gross leasable area should be assessed at the same rate.
- The subject assessment is in excess of the legislated market value standard.
- Such further and other facts or grounds that are identified as disclosure of the manner in which the assessment and similar assessments were prepared and as the equity analysis develops through amended notices or board decisions.

In advocating changes to the rental rates applied to the retail and auto service areas, as well as a change to the cap rate, the Complainant requested the assessment be reduced from \$12,764,500 to \$9,220,000 or \$124.33 per sq.ft.

The CARB considered the complaint form together with the representations and materials presented by the parties. The Board determined the following issues:

Issue 1: Is the subject property equitably assessed?

Sub-issue 1(a): Should the retail area typical rental rate be reduced from \$12 to \$10?

Sub-issue 1(b): Should the auto service area attract the same rental rate as the retail area?

Issue 2: Is the subject property assessed in excess of its market value?

ISSUE 1: Is the subject equitably assessed?

Sub-issue 1(a): Should the retail rental rate be reduced from \$12 to \$10?

Summary of Party Positions:

The Complainant presented a list of Marshall & Swift building costs for various types of big box stores of 130,000 sq.ft. size in Calgary. The subject was suggested to have a base cost somewhere between that of a warehouse discount store (\$65.41 per sq.ft.) and a discount store with limited grocery component (\$73.63 per sq.ft.). From the Complainant's submission, "Given the sometimes relationship between the costs of development and the determination of rental value, varying costs of construction between improvement types can assist in the determination of expected rental rates."

As there was no recent big box leasing activity in the Municipality, the Complainant presented information from other jurisdictions. A page of Alberta properties from Airdrie to Wetaskiwin showed the assessed rental rates and cap rates as applied in other municipalities for similar properties with auto service areas. Most of the assessed rental rates were in the \$10-\$11 range, and most of the cap rates were in the range of 7.5%-9%.

The Complainant asserted that anchor tenant leases are typically signed for 20-25 year terms with no incremental increases, but the subject property and 5 other Canadian Tire leases have 15 year terms and atypical step ups. Details from the other five leases were shown. Three leases commenced Oct. 1, 2008 in Drayton Valley, Leduc and Airdrie, and two locations in Calgary dated to 2005 and 1999. The rent per sq.ft. was shown for each 5 year timeframe, the current rates for the five leases being \$12, \$14 and \$14 and in Calgary, \$15.55 and \$16.73. If one took the total rent generated over the 15 years and amortized that amount over 20 years, the average annual rent ranged from \$9.93 to \$11.66. Rental rates for large retail anchors remained steady throughout the years 1996-2008, supported by lists of leases from across the country for discount box stores, full line department stores, and national retailers. In consideration of all of the above, the Complainant concludes a \$10 lease rate should be applied to the subject's leasable area.

The Respondent noted the subject assessment had increased some 10% over the previous year, as compared to an average increase of some 25% for commercial properties in the Municipality, and so the subject had not been treated unfairly. The assessor compares similar spaces in determining typical market rent, and further noted that all of the Complainant's information originated from outside the Municipality. The local short supply of land pressures both land values and lease rates.

Decision:

The Complainant has not shown the subject property is assessed inequitably in comparison to other big box retail stores in the Municipality, nor shown that the \$12 rate applied to the retail area is incorrect and should be varied.

Reasons:

Neither party presented current or historical leasing evidence from the Municipality. The Complainant states that there is no current leasing evidence available, and the Respondent need not respond where onus is not met. The Complainant's points about Calgary construction costs, and the stability of long term lease rates were left dangling; nothing was advanced to show how these trends may have played out in the Municipality.

Inferences can be drawn from other municipalities in an information vacuum. In this regard, the Complainant's own evidence showing the rents paid at Canadian Tire locations in Drayton Valley, Leduc and Airdrie (\$12, \$14 and \$14) are strongly suggestive that the \$12 assessed rate in the Municipality is low. The Complainant stated the subject property is under lease, and like the 3 above and 2 locations in Calgary had atypical rent step-ups each 5 years of the 15 year terms. The CARB is prompted to make several observations. In the experience of the Board, five year rent step-ups are entirely typical of long term leases. Secondly, although the registered owner of the subject property is Canadian Tire Corporation Ltd., there may well be a lease arrangement between a local franchisee and the corporation. Whatever that status, notably absent were any details of such lease presumably dated 1996 and also presumably soon due for renewal/renegotiation as of July 1, 2010.

Deserving of its own distinct paragraph was the Complainant's methodology of computing the rent accumulated over a term of 15 years and then "amortizing" the result over 20 years. The CARB appreciates that one can sometimes acquire 20 tire pressure gauges for the price of 15, but most landlords do not typically reward 15 years of tenancy with 5 years of free rent.

The Board notes the Complainant's materials took exception to the \$1 lease rate applied to the mezzanine office space, arguing that mezzanine storage and office are now obsolete, and modern leases no longer specify rent for these spaces, that the limited value is captured in the main floor rate. From the submission, "If the mezzanine and/or storage areas are deemed to be assessable, the rates should be equitable between similar and comparable properties." The CARB notes that the mezzanine storage space is not assessed, and the Respondent advised some 4 or 5 properties in the Municipality have similar mezzanine office spaces, all assessed at the \$1 lease rate and 8% cap rate. The assessment department used to value these spaces as comparable to 2nd floor warehouse office rates, about \$8 per sq.ft., but now applies the \$1/sq.ft. "to acknowledge it is there." Equitable treatment established, the CARB is satisfied the mezzanine office rate is no longer a live issue, and indeed, the Complainant's valuation request used the \$1 rate for the subject's mezzanine office. The cap rate issue is discussed at Issue 2.

Sub-issue 1(b): Should the auto service area attract the same rental rate as the retail area?

Summary of Party Positions:

The 7312 sq.ft. auto service area is assessed at an annual lease rate of \$23 as compared to the \$12 rate applied to the 74,155 sq.ft. retail area. The Complainant asserts the auto area is just an operational unit within the store, which no independent interest in the property has been created,

and the same rate should be applied throughout. The list of Alberta box stores containing some portion of auto service in municipalities ranging alphabetically from Airdrie to Wetaskiwin showed the same rental rate was applied to the entire area. Attention was drawn to MGB Board Order 089/07 which found inappropriate the assessment of premium lease rates for an optical department and fast food restaurant within 2 Walmart stores in Edmonton. A Lethbridge decision, CARB – 0203-0004/2010, dealt with the same issue as here, the application of a premium rate for the auto service area at a Canadian Tire store, and found the retail rate should prevail throughout. MGB Decision Letter 082/08 dealt with an appeal from an Okotoks Walmart store where the ARB had, among other things, determined the fast food and automotive portions should be assessed at the same rates used for the rest of the store. At the appeal, the assessor withdrew the objection to the uniform application of retail rent rate to the auto portion, and the MGB upheld the ARB decision relating to the restaurant portion.

The Respondent defended the \$23 auto service lease rate by observing that rents for this type of space in the Municipality are far higher than retail rates. Comparison had been made to lube shops, mechanic shops occupying bays in industrial buildings, and a PetroCanada facility. Had the assessor chosen to apply a blended rate, it would have been \$12.99 or \$13. The Respondent distinguished the Walmart fast food restaurant decisions in that the rent accrued to Walmart, not the property owner. As well, the auto service area here comprised some 9% of the total area, far larger than the restaurant cases. In any event, these decisions related to other municipalities and market conditions were different in the Regional Municipality of Wood Buffalo.

Findings:

1. The CARB was not convinced the comparables presented by the Respondent in oral evidence were sufficiently similar to the subject auto service area.
2. Decisions of other panels dealing with the same issue are influential, and indeed, the best evidence before this CARB.
3. The auto service area should have the same lease rate as the main retail area, \$12 per sq.ft. Making this change, the auto service capitalized net operating income drops to \$1,055,853 and the assessed value decreases to \$11,796,675 prior to rounding.

Reasons:

The CARB had two concerns. As mentioned, the descriptions of the comparables presented by the Respondent did not satisfy the Board that they were truly comparable to the subject's auto service area. Details were scant. The Respondent's case could have been bolstered by the presentation of photos and measured areas.

Next, the Board considered market value. The subject is a big box store in the midst of a power centre development. If the property were vacant, the pool of potential tenants would be other big box retailers, but what use would this space find in the hands of such a retailer? Beyond storage space, not much springs to mind. To bring auto service space up to a retail finish standard would entail some considerable expense. If the space were entirely demised from the retail area, would

another tenant be allowed to, say, repair heavy equipment? Would not zoning bylaws come into play? It occurs to the CARB that the occupant Canadian Tire has a clever business model, offering auto repair in conjunction with retailing tires, auto parts, and a host of other things. The business of auto repair might be particularly lucrative in the Municipality, and perhaps the market lease rate for 7000+ sq.ft. "garage" space is as the Respondent suggests. The Assessor will have the opportunity to prove so next year, if the issue arises in the next assessment year. In the meantime, the CARB feels that it is a successful business that is being assessed at a \$23 lease rate, rather than the property. Apparently, assessment panels elsewhere felt the same.

ISSUE 2: Is the subject property assessed in excess of its market value?

Summary of Party Positions:

The Complainant presented details of a vacant big box sale in January 2008 at a superior location, South Edmonton Common. This \$15,000,000 sale represented the market top in Alberta at \$116 per sq.ft., and utilizing the City of Edmonton's income approach parameters at the time for vacancy and cap rate (7%), a rental rate of \$8.29 was extracted. This was a valid arm's length sale, as reported by both vendor and purchaser, and is significant market evidence given the paucity of big box transactions in the marketplace. Moreover, this sale occurred prior to the downturn of financial and real estate markets later in 2008, and consideration should be given to that \$116 per sq.ft. value as compared to the current assessment of \$172 per sq.ft. The requested assessment of \$9,220,000 represents a per sq.ft. value of \$124.33.

The Complainant questioned the use of a 7.5% cap rate for the majority of the subject space, and an 8% cap rate applied to the mezzanine. A single cap rate should apply to a single development, and that rate should be 8%.

The Respondent illustrated property values in the Municipality by presenting two (2) sales, a vacant theatre building sited on 36,393 sq.ft., and a small retail building on 24,394 sq.ft. In each case the price per sq.ft. of improvement was in excess of \$500. In the case of the second property, it sold in February 2010 for \$4.3 million and previously at \$3.1 million in April 2007. The vacant theatre sale in October 2008 saw a price of \$9.5 million for .835 acre.

The Respondent tested the assessment by preparing a cost approach valuation, accepting the premise that a buyer would pay no more for a property than the cost of replacing it with an equally desirable and functional substitute. Three (3) vacant land sales were presented with parcel sizes ranging from 1.8 acres to 5.98 acres and prices per sq.ft. of \$43.76, \$70.56, and \$76.02. For the subject 5 acres, a land value at the lower end of this range was appropriate, and so a \$45 per sq.ft. was used, producing a result of \$9,784,710. Using Marshall & Swift tables for an average quality steel construction building, the US base cost was converted to Edmonton cost, and from Edmonton to the Municipality through the Cuthbert Smith 2010 Construction Guide. A "depreciated replacement cost new" value was calculated for the three parts of the structure: main floor retail at \$3,875,878; mezzanine at \$131,805; auto centre at \$616,302. The total depreciated building cost amounted to \$4,623,984 and added to the land value of \$9,874,715 yielded a total cost approach value of \$14,408,690. This amount was some \$1.6 million greater than the assessed value of \$12,764,500.

The Assessor defended the 7.5% capitalization rate used for the main retail and auto service areas by showing a third party cap rate report from Colliers International. This survey found a 6-6.5% cap rate for Calgary regional/power centers and in Edmonton the reported range was 6.25-7%. In consideration of the higher risk attached to the Municipality's market, the Assessor applied a 7.5% cap rate to this power centre property. In explanation of the 8% cap rate applied to the mezzanine, the Assessor chose this higher rate for reasons of equity. Some other properties with mezzanine space are valued at the higher cap rate, and it was decided to extend the benefit to all.

Findings:

1. The Edmonton Walmart sale advanced by the Complainant offers little guidance as to sales values in the Municipality.
2. The 7.5% cap rate applied to the subject was not shown to be wrong.

Reasons:

1. The CARB is familiar with the Edmonton Walmart sale. A number of MGB Board Orders have offered comment on the sale, including MGB 100/09 and MGB 099/10. Although it offers some insight to Edmonton big box value as of January 2008, there are a number of problems associated with the sale. The CARB understands that Walmart vacated these premises to occupy a larger Supercentre at the same South Edmonton Common development, whose developer is also the buyer, Cameron Corporation. Although Cameron and Walmart avow an arm's length sale occurred, there was a side-relationship as regards the new Supercentre location. The seller's transaction questionnaire returned to the City of Edmonton advises the property was marketed by word of mouth, but both parties agree a single realtor with a 604 area code was involved. The sale also involved a restrictive covenant in favour of Walmart to restrict the types of businesses that could occupy the site, although this has not hampered the ability of the landlord to subsequently demise and lease the premises.

Whatever the merits of this sale, its implication for property value in the Municipality has not been established. The South Edmonton Common can properly be considered a superior location in Edmonton, but the Complainant's suggestion that this sale represented a market top for Alberta and values declined since, is apparently a lesson lost on buyers in the Municipality. The Respondent's sales indicate a market marching to a different drummer.

2. There was no evidence advanced to show that 7.5% was an inappropriate cap rate for the subject. The higher rate applied to the mezzanine is certainly different, but the subject benefits from the application of this split rate.

PART D: DECISION

The complaint is allowed, in part, and the assessment is set at \$11,796,500.

It is so ordered.

Dated at Fort McMurray in the Province of Alberta, this 16th day of September, 2011.

A handwritten signature in black ink, appearing to read 'J. Noonan', is written over a horizontal line.

J. Noonan, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO.	ITEM
1. Exhibit 1C	Property Assessment Review, 32 pages
2. Exhibit 2C	Support and Background, 169 pages
3. Exhibit 3C	Rebuttal Evidence, 37 pages
4. Exhibit 4R	Commercial Property 2011 Assessment Brief, 32 pages

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. Ryan Sweeney	Assessor, Regional Municipality of Wood Buffalo