ASSESSMENT REVIEW BOARD

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

NOTICE OF DECISION NO. 0098 139/11

Cameron Corporation
10180 111 Street NW
Edmonton, AB T5K 1K6

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 August 22, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9980521	1525 99 Street NW	Plan: 0022164 Block: 15 Lot: 3	$17,580,500	Annual New	2011

Before:

John Noonan, Presiding Officer
Brian Hetherington, Board Member
Petra Hagemann, Board Member

Board Officer: Jason Morris

Persons Appearing on behalf of Complainant:

Jay Cohen, Agent representing the tenant of Cameron Corporation, Cineplex L.P.

Persons Appearing on behalf of Respondent:

Cam Ashmore, Law Branch, City of Edmonton
Chris Hodgson, Assessor, City of Edmonton

BACKGROUND

Roll number 9980521 comprises two properties at the South Edmonton Common shopping centre complex, leased from the owner, Cameron Corporation, by two different parties. One property is a free-standing restaurant and the subject under complaint is a Cineplex theatre. The theatre has an area of 74,410 sq.ft. carrying an assessed typical rent rate of $16 per sq.ft. and a 19,061 sq.ft. mezzanine assessed at a $1 rate. In the capitalized income approach to valuation, the Respondent has applied deductions from potential gross income for 3% vacancy allowance, 2% structural and $7 per sq.ft. vacancy shortfall. The resulting net operating income (NOI) was capitalized at 7.5%. As discussed in preliminary matters, the question of appropriate vacancy allowance was not properly before the CARB; at issue was the capitalization rate to be applied to the net operating income generated by the Cineplex tenancy.

PRELIMINARY MATTERS

At the commencement of the hearing, two preliminary issues were raised by the Respondent.

1. Proper Party

First, the Respondent noted that the Complaint had been filed in the name of the owner of the property, Cameron Corporation. However, Mr. Cohen's agent authorization form had been signed by another party, Cineplex L.P., the tenant of the subject property. Mr. Ashmore for the Respondent suggested that the matter could be resolved by having Mr. Cohen obtain the authorization form from the property owner. Mr. Cohen indicated that this was possible. The Board adjourned with the Respondent's consent to allow Mr. Cohen the opportunity to obtain that form.

When the hearing reconvened, Mr. Cohen provided the Respondent and the Board with an agent authorization form signed by an executive of Cameron Corporation, accepted by all parties.

2. Information on Vacancy Rates

The Respondent then raised a second preliminary issue. Mr. Ashmore stated that evidence which had been disclosed in support of an assertion by Mr. Cohen, that an incorrect vacancy rate had been applied to the subject property, was not properly before the board as it violated s 9(1) of the *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 [MRAC].

> **Failure to disclose**
> 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.

The Respondent's position was that s 9(1) of *MRAC* prohibits the board from hearing any matter not identified on the complaint form. The complaint form identified a single issue: "It will be the appellant's position that the capitalization rate should be 8.5% and not 7.5%."

The Respondent therefore submitted that evidence relating to the vacancy rate was not properly before the Board.

The Complainant's position was that effort had been made to file the complaint expeditiously, and that it was filed before the Complainant became aware that the vacancy rate was problematic. The Complainant noted that the matter of vacancy rates was disclosed to the Respondent in accordance with the requirements of the regulation, and that the matter did not come as a surprise to the Respondent. The Complainant suggested that because a capitalization rate must be applied to a net income, and because the calculation of net income includes the use of vacancy, that the question of vacancy could be considered included in the issue of the appropriate capitalization rate.

DECISION – PRELIMINARY MATTER

MRAC uses the terms issue, grounds, and matters for a complaint but does not define these terms. In practice, "vacancy allowance" is recognized as a different issue from "capitalization rate" under the meaning of s 9(1) of *MRAC*, and consequently the Board decided it had no jurisdiction to consider the issue of vacancy, as it had not been identified on the complaint form.

ISSUE

The sole issue identified on the complaint form was, "It will be the appellant's position that the capitalization rate should be 8.5% and not 7.5%." This position was refined at the evidence disclosure stage, and the issue before the CARB was:

Should the capitalization rate be changed to 8% from 7.5% for the theatre portion of this roll's assessment?

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 presented assessment details for the subject and two other theatres, Clareview (5074 130 Ave) and 137 Ave (14231 137 Ave). The assessment parameters were identical in every respect, with the exception of a 7.5% cap rate applied to the subject as opposed to 8%. Particular attention was drawn to the 137 Avenue property, another Cineplex theatre very similar

in age, size, seating capacity and number of screens. The Complainant requested equitable treatment with these comparables and indeed, other theatres in Edmonton where an 8% cap rate had been uniformly applied. The restaurant value on the roll, $2,510,675., was not at issue, but if the complaint were successful the theatre assessment would drop from $15,069,880 to $14,127,957 and the roll assessment from $17,580,555 to $16,638,632 prior to rounding.

The agent, Mr. Cohen, ventured that a 7.5% overall cap rate was appropriate for the entire South Edmonton Common development, but that 7.5% did not necessarily reflect the investment risk profile of each component of the Common. A theatre is a special purpose build and if Cineplex were to vacate the premises, the owner would face significant redevelopment or retrofit expenses, entirely dissimilar to the ease of conversion of a retail space from ladies' wear to menswear for instance. A higher cap rate would acknowledge this greater risk. Two examples of south Edmonton theatres that closed and were sold in September and November 2007 were noted: a Calgary Trail property had been dark some 4 years and was just now converting to a retail furniture store; a 99th Street property had only recently re-opened as a Canada Post sorting station.

Distinguishing the subject complaint from those South Edmonton Common decisions presented to the Board by the Respondent, Mr. Cohen observed some of those complaints appeared to involve multiple roll numbers comprising clusters of retail development. Again, no exception was taken to South Edmonton Common's overall 7.5% cap rate this year. However, a hypothetical example of a power centre development was presented: a 75,000 sq.ft. theatre, five 3,000 sq.ft. retail stores, a 15,000 sq.ft. junior anchor, a 4,000 sq.ft. McDonald's, and a 5,000 sq.ft. gas bar-car wash. Using estimated rents for the above and applying the identical income approach allowances and cap rate produced an "assessor's" view of value. In contrast, an alternate "investor's" view was presented with the small retail spaces being accorded a lower risk rating and thus a 7% cap rate, a 6.5% cap rate for a long term McDonald's lease, the 7.5% average rate a long term junior anchor, 8% for a long term theatre lease, and a 10% above average risk rate for the gas bar to reflect potential environmental concerns, conversion risk, etc. The average cap rate was still 7.44% and the weighted average 7.84%, very close to the assessor's 7.5% but a better reflection of marketplace reality. The assessor's method of equal treatment for all resulted in the higher risk properties, theatre and gas bar, subsidizing McDonald's and the lower risk retail properties. Just as different properties are assessed with different lease rates, the process should extend and do the same with cap rates and vacancies to reflect the characteristics and risks attached to various types of property, as does the market.

As to the Respondent's assertion that the South Edmonton Common location was superior, Mr. Cohen countered that if a location offered double the normal traffic flow, such an advantage would be reflected in rent rates, not the cap rate.

POSITION OF THE RESPONDENT

South Edmonton Common contains more than 2.3 million sq.ft. of retail space, most of which is fully occupied or is pending occupancy when complete. It is the largest development of its kind in Canada, if not North America. With high visibility and superior traffic flow, South Edmonton Common commercial properties enjoy a superior location, lesser risk, and therefore deserve a lower cap rate. To the best of his recollection, Mr. Hodgson believes that all of the Common is assessed at the same 7.5% cap rate and 3% vacancy, with the possible exception of Ikea which might have a lower cap rate applied. In contrast, the developments at Clareview and 137 Avenue

from which the Complainant's comparables were drawn, attract the same 3% vacancy but an 8% cap rate. The point is not to compare one theatre to another, but rather to look at location. In this regard, the subject occupied a superior location, and the Assessor asked the CARB to confirm the assessment.

When asked by the Complainant if there would be a different cost to retrofit a menswear store to a ladies' wear store as opposed to converting a special purpose property such as a theatre complex, the Assessor advised he was not expert in such matters, and that no evidence had been presented to suggest such cost differential.

Asked if the theatre were located across the street from South Edmonton Common, would it not attract a higher cap rate, the Assessor declined to answer, suggesting that many factors, such as traffic flow, would require consideration.

Mr. Ashmore, Counsel for the Respondent, summarized that the Board needed to reach a decision on whether the two Complainant comparables were similar to the subject, or were there differences sufficient to justify different assessment treatment. In his view, the logical difference was South Edmonton Common, and the Complainant had failed to show evidence the other locations were the same as or similar to South Edmonton Common. The comparables were located in industrial areas and did not enjoy the same high traffic flow as the subject. Several MGB decision letters/Board Orders were highlighted, all attesting to the superior calibre of the Common: MGB 017/06, DL 132/09, and MGB 099/10. As to the two closed theatres cited by the Complainant that endured long redevelopment times, again those locations were not shown to be comparable to the subject, but rather were at the end of their economic lifespans.

DECISION

Roll Number	Original Assessment	New Assessment
9980521	$17,580,500	$16,638,500

REASONS FOR THE DECISION

In the interest of consistency and assessment predictability, the CARB prefers to give substantial weight to previous decisions of assessment tribunals. Several MGB decisions have dealt with great swathes and individual big box stores at South Edmonton Common, and found a superior location that justified superior valuations. This CARB is dealing with a special built entertainment property that deserves different consideration than typical, even very successful, retail development.

The most persuasive argument the Board heard was that a theatre property carries greater investment risk than typical retail development. If for some reason the tenant abandoned this site, the owner would be confronted with re-leasing risk to a limited pool of tenants who might be interested in using the property in the same way, or face significant retro-fitting expense to convert some 74,000 sq.ft of specialized space to some other use. The Assessor observed that "a theatre is set up to be a theatre," and that there would be expenses associated with retrofitting it for another use. The Assessor also observed that no evidence had been presented to show that such retro-fitting expense would be any greater for the subject than a normal retail space, and that he, himself, was not expert in such matters. Neither is the CARB, but in the immortal words

of Bob Dylan, "You don't need to be a weatherman to know which way the wind's blowin'." Although no evidence was produced to confirm such, the Board would wager heavily that the subject has sloped floors in its auditoria.

The CARB may not necessarily agree with all the suggested values advanced by the Complainant in the hypothetical power centre example showing different rents and cap rates for different property types, nonetheless, the Board found significant merit in the argument that the market would assign a different cap rate to a restaurant than to a gas bar with its attendant potential for contamination risk. Just because they're all located in one power centre, it does not follow that they should all carry the same cap rate.

The Respondent's case was based entirely on the locational superiority of the subject as compared to the 137 Avenue and Clareview theatres, which the City views as being in industrial neighbourhoods. The CARB acknowledges commercial/industrial development along St. Albert Trail, and more so in the Yellowhead corridor, but despite the municipal neighbourhood mapping regime, would not characterize the comparables' developments as industrial. In any event, the Board recognizes that a theatre draws its audience from a larger area than its immediate vicinity.

Although the CARB is more interested in the end result of a capitalized income estimate of value, the Board does not dispute valuation theory that rent reflects the advantages or constraints of a property's ability to generate income, and a cap rate measures the risk attached to the anticipated income stream. If South Edmonton Common offered a tenant dramatically greater opportunity of revenue generation, one would expect commensurate rent. Neither party has chosen to present evidence of the rents paid at the subject location or the comparables' locations, although in fairness, neither was rental rate an identified issue.

Section 467(3) of the *Municipal Government Act* directs an assessment review board not to alter an assessment that is fair and equitable, taking into consideration the assessments of similar property in the same municipality. The CARB finds the subject theatre more similar to the theatres presented as comparables than the array of retail development close by, and decides that a capitalization rate common to other theatres produces an equitable result.

Dated this 24th day of August, 2011, at the City of Edmonton, in the Province of Alberta.

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John Noonan, 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, RSA 2000, c M-26.
