ASSESSMENT REVIEW BOARD

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

NOTICE OF DECISION NO. 0098 56/11

AEC International Inc.
#112, 1212 1st Street SE
Calgary, AB T2G 2H8

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 18, 2011, respecting a complaint for:

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
9152109	5004 98 Avenue NW	Plan: 2542NY Block: 3 Lot: 1	$31,328,500	Annual New	2011

Before:

Hatem Naboulsi, Presiding Officer
Dale Doan, Board Member
George Zaharia, Board Member

Board Officer: Nicole Hartman

Persons Appearing on behalf of Complainant:

Cameron Hall, AEC International Inc.

Persons Appearing on behalf of Respondent:

Cameron Ashmore, City of Edmonton, Law Branch
Frank Wong, City of Edmonton, Assessor

PROCEDURAL MATTERS

Upon questioning by the Presiding Officer, the parties present indicated no objection to the composition of the Board. In addition, the Board members indicated no bias with respect to this file.

PRELIMINARY MATTERS

The Complainant raised two preliminary matters:

1. There was concern that the Respondent's responses did not meet the requirements of the *Municipal Government Act* (MGA). He asked that either the information be removed or little weight be given to it.

2. In the opinion of the Complainant, the assessor has done a new assessment in changing the identification of the subject property from a "community centre" to a "power centre" resulting in a recommended 2011 assessment in the amount of $45,073,000, increased from the original assessment of $31,328,500. This is in contravention of s. 305(5) of the MGA.

With respect to these two preliminary matters, the Board decided to continue the merit hearing and place appropriate weight on the evidence presented.

The Respondent raised a preliminary matter relating to MRAC s. 9(3), stating that the Request for Information (RFI) for 2010 was not completed. The Respondent requested that any evidence involving 2010 included in the Complainant's evidentiary package not be considered.

The Board concurred with this request and decided that no information from 2010 would be considered.

BACKGROUND

The subject property is an enclosed shopping centre (Capilano Mall) originally built in 1966 and located on the central east side of Edmonton at the corner of 101st avenue and 50th street. The shopping centre is situated on a lot 1,027,820 square feet (23.6 acres) in size and totals 336,991 square feet in building size, comprising 141,670 square feet of anchor tenant space, 185,121 square feet of mixed CRU space, and 10,200 square feet of office space.

ISSUE(S)

Does the 2011 assessment of the subject property properly reflect 1) the income potential of the shopping centre, 2) the impact of the CRU vacancy, and 3) the risks of the shopping centre in a too low capitalization rate?

LEGISLATION

The *Municipal Government Act*, R.S.A. 2000, c. M-26;

s. 305(5) If a complaint has been made under section 460 or 488 about an assessed property, the assessor must not correct or change the assessment roll in respect of that property until a decision of an assessment review board or the Municipal Government Board, as the case may be, has been rendered or the complaint has been withdrawn.

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.

***Matters Relation to Assessment Complaints Regulation 301/2009* (MRAC);**

s. 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.

***Matters Relating to Assessment and Taxation Regulation 330/2009* (MRAT);**

s. 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.

POSITION OF THE COMPLAINANT

1. In support of the contention that the assessment of the subject property was too high, the complainant submitted two evidentiary packages marked as C-1 and C-2 and a Municipal Government Board order marked C-3.

2. Historically, the subject property has been the subject of assessment complaints; the most recent complaint for the 2010 assessment resulted in a reduction in assessment from $36,322,000 to $31,346,999 based on an increase in the CRU vacancy rate from 10% to 15% (Exhibit C-1, page 3).

3. The original 2011 assessment of the subject is $31,328,500, reflective of the assessor carrying forward the 2010 CARB decision regarding the increasing of the CRU vacancy rate from 10% to 15% (Exhibit C-1, page 3).

4. The present complaint is based on the issues and grounds that:

    a) Capilano's assessed value exceeds its market value due to:
        - the impact of vacancy being under-accounted for,
        - the impact of centre health on capitalization rate being under-accounted for, and
        - the failure to properly align the potential rent roll with that actually achieved.

    b) Capilano's assessed value is inequitable due to its being assessed in comparison to superior properties (Exhibit C-1, p. 4).

5. While Capilano has been referred as being anchored by Wal-Mart, that characterization is no longer factually accurate. Anchored shopping centres operate by drawing shoppers between multiple anchors located at opposite points of CRU corridors. In 2006, when Wal-Mart unilaterally chose to physically terminate access to the mall as a pre-condition of remaining on this site, this physical change effectively left the mall without an anchor (Exhibit C-1, page 5).

6. Capilano is an aging property in decline, and although it is reasonably well-kept and clean, it has not been refurbished in twenty years and its design and layout are 45 years old (Exhibit C-1, page 6).

7. Capilano is widely recognized as a property suitable for redevelopment and although a number of redevelopment propositions have been considered, none have proved economic (Exhibit C-1, page 6).

8. Most retail real estate developers and national retail firms evaluate site potential through demographic analysis. Reputable services like "Monday Report on Retailers and Statistics" track this information. In thirteen malls in Edmonton and surrounding municipalities, including the subject, the purchasing power per square foot ranged from a low of $3,455 per square foot to a high of $24,196 per square foot with the subject having the lowest purchasing power (Exhibit C-1, page 7).

9. The Complainant has physically inspected all the comparables identified by the Respondent and has found the condition of the comparables much better than the subject, the occupancy much higher, the kiosks healthy and active, national retailers being present, modern and redeveloped space, and many more shoppers than would be found at Capilano (Exhibit C-1, pages 7 & 8).

10. Capilano suffers severe obsolescence and is deeply dysfunctional, and in absence of significant demolition and reconstruction, the present physical limitations cannot be undone. It is the position of the Complainant that the assessor is required by law to assess the Mall as it now stands and therefore “Capilano’s health must be taken into consideration and properly weighed” (Exhibit C-1, page 10).

11. The Complainant argues that there is an atypical CRU vacancy in the subject property. Based on a 2010 CARB decision, the assessor had carried forward a 15% CRU vacancy rate for the 2011 assessment. However, the CRU vacancy in 2009 upon which the 2010 CARB decision was based was 21.0%, while the vacancy as at July 1, 2011 has risen to 23.2%. The Complainant suggested that a two-year stabilized rate of 22% would be the most appropriate CRU vacancy allowance in the present circumstances (Exhibit C-1, page 15).

12. The Complainant acknowledges that the assessor has chosen three capitalization rates to value properties comparable to the subject ranging from 7.5% to 8.5%. These rates have remained consistent for the 2010 and 2011 years with Millwoods Town Centre being the one exception. There was a minority interest (40%) sale of this property reported at a 7.6% capitalization rate, prompting the City to decrease its 2011 cap rate from 8.0% in 2010 to 7.5% in 2011 (Exhibit C-1, page 20).

13. Capitalization rates capture investment risk. If an investment is riskier, its cap rate must be higher to reflect the greater return that reasonable purchasers require in the open market to take on that associated risk. The persistent atypical high CRU vacancy rate experienced by the subject is an indication of increased investment risk. It is the position of the Complainant that a 3-5% increase of the capitalization rate for the subject would be appropriate and necessary, resulting in a 10.0% cap rate (Exhibit C-1, page 23).

14. The Complainant states that the subject is assessed as if triple rents were in place; however, his position is that this is incorrect since all rents are either gross or semi-gross. This means that the indicated net operating income for the subject property is incorrect and does not reflect actual current market conditions (Exhibit C-1, page 33). By applying the vacancy shortfall rates as identified by the Respondent to all of the leasable space, the result is a structural shortfall of $2,705,400 which is greater than the 2011 net operating income (NOI) of $2,519,251, making the property effectively worthless (Exhibit C-1, page 35). The Complainant questions whether this adjustment is real and by using a three-year period to stabilize the shortfall, arrives at a structural NOI shortfall of $1,314,765. Recalculating the pro forma using a 22% CRU vacancy rate, a 10.0% cap rate and a structural vacancy shortfall of $1,314,765 results in a value of $11,653,580 (Exhibit C-1, page 38).

15. Utilizing a 22% CRU vacancy rate, a 10.0% capitalization rate, and maintaining the original market rent of $3.50 per square foot, the Complainant requested that the Board reduce the original 2011 assessment from $31,328,500 to $19,800,000 (Exhibit C-1, p. 39).

POSITION OF THE RESPONDENT

1. Although Capilano Mall had been categorized as a "Community Centre", the Respondent changed the category to a "Power Centre", prompting the recommended increase in the 2011 assessment from $31,328,500 to $45,073,000.

2. Community Centres provide a wider range of facilities for the sale of soft lines (wearing apparel for men, women and children). This type of centre is built around a junior department store (junior anchor tenants), variety store, or discount store as a major tenant and usually includes a supermarket. Typically, community centres represent an enclosed structure (Exhibit R-1, p. 12).

3. Power Centres are defined as "large community centres with more than 250,000 square feet of space anchored by at least three, but often four or more, anchor tenants that occupy approximately 75% (60 – 90%) of the Gross Leasable Space" (Exhibit R-1, page 13). It is the position of the Respondent that by physically closing off access from the mall to Wal-Mart, this changed the category of the mall from "Community" to "Power".

4. The original 2011 assessment of the subject as a Community Centre was based on the 141,670 square feet of space occupied by the anchor tenant (Wal-Mart) valued at a market rent of $3.50 per square foot resulting in the assessed value at $31,328,500 (Exhibit R-1, page 18). The recommended increased 2011 assessment of the subject as a Power Centre was based on the 141,670 square feet of space occupied by the anchor tenant (Wal-Mart) valued at a market rent of $11.50 per square foot resulting in the assessed value at $45,073,000 (Exhibit R-1, page 19).

5. The Respondent provided a Network document outlining the sale of the subject property that occurred February 27, 2007 (Exhibit R-1, page 20). This sale included a Safeway, which although physically connected to the Capilano Mall, is not part of this complaint since it is assessed separately and has its own roll number. The subject sold for $41,000,000 (including Safeway), with 16,882 square feet (4.39%) vacant at time of sale and a Net Operating Income (NOI) of $2,570,524 that was capitalized at a rate of 6.27%. Rents for the CRU space were considered below market levels, and Wal-Mart exercised an option to renew its lease until 2012.

6. The Respondent provided summaries of three building permits issued for the subject property totalling $7,350,000, all subsequent to the February, 2007 sale of the subject (Exhibit R-1, pages 21 to 23). The work included renovations and additions to the existing mall as well as construction of a new restaurant on a separate pad. By adding the cost of these additions/renovations and new construction to a time-adjusted sale price of Capilano Mall at $37,089,656, the resulting total value of the property subject to this complaint would be $44,439,656.

7. The Respondent was persuaded by the following comments made by the Complainant in its evidentiary package that the subject should be re-categorized as a power centre: "In 2006 Wal-Mart unilaterally chose to physically terminate access to the mall as a pre-condition of their remaining at this site". "…the closing of the mall entrance into Wal-Mart was an initiative of their head office in Arkansas. It is Wal-Mart's mandate across

the continent to have “stand-alone” stores. A condition for Wal-Mart to renew their lease at that time was for the entrance to be closed off – thereby making it “stand-alone” (Exhibit R-1, pages 25 & 26).

8. The Respondent provided three comparable assessment rents of three other Wal-Marts in Edmonton, one at $10.50 per square foot and two at $11.50 per square foot while the Wal-Mart at Capilano was originally assessed at a market rent of $3.50 per square foot (Exhibit R-1, page 27).

9. A detailed report for the subject showed that the value of the improvements of the subject was $16,478,161 while the land was valued at $26,824,985 for a final rounded assessment of $43,303,000 (Exhibit R-1, page 30). In support of the land value, the Respondent provided four sales comparables that occurred between October 2006 and April 2009 for time-adjusted sale prices ranging from $32.90 to $56.82 per square foot. This resulted in an average of $42.08 per square foot, supporting the assessed land value of the subject at $26.10 per square foot (Exhibit R-1, page 31).

10. The Respondent had originally utilized a stabilized CRU vacancy rate of 15% in 2008, 10% in 2009, 10% in 2010 and 15% in 2011. As a result of a 2010 CARB decision that increased the CRU vacancy rate from 10% to 15%, the Respondent carried forward the 15% rate to the 2011 assessment (Exhibit R-1, page 36).

11. The Respondent provided a chart showing the vacancy rate trend over five years for 2004, 2005, 2007, 2008 and 2009. 2006 was not included due to the sale of the subject in 2007 and the property owner not submitting the RFI information to the City. The average vacancy rate for those five years was 0% for anchor space, 10.49% for CRU space, and 7.16 for office space, with an overall average for all types of space of 6.38% (Exhibit R-1, page 37).

12. For 2011 assessments, the City applied capitalization rates of 7.5%, 8.0% and 8.5% for shopping centres such as the subject. Factors that affect cap rates are location, tenant mix, renovations, free parking, foot traffic, and household income. The cap rate applied to the subject was 8.0%.

13. The Respondent refutes the Complainant’s use of the North Town Centre as a comparable sale to the subject. The Respondent points out that the subject sold nine months after the sale of the North Town Centre at a cap rate of 6.27%, half that of the North Town Centre. At the time of sale, the vacancy rate at the North Town Centre was 36.67% compared to the 4.39% vacancy of the subject at the time of sale, increasing to an average of 11.20% in 2009 (Exhibit R-1, page 44).

14. The Respondent is in agreement with the Complainant that the subject is a redevelopment site, a position supported by Avison Young (Exhibit R-1, page 81).

15. Based upon the evidence, the Respondent is requesting the Board to accept the recommended increased assessment of the subject property from the original $31,328,500 to $45,073,000.

DECISION

The decision of the Board is to increase the assessment from the original 2011 assessment at $31,328,500, but reduces it from the increased assessment requested by the Respondent at $45,073,000, thus establishing the value at $40,795,500.

REASONS FOR THE DECISION

1. The Board accepted the Respondent's position that the subject property was assessed using mass appraisal that "requires standardized procedures across many properties. Thus valuation models developed for mass appraisal purposes must represent supply and demand patterns for groups of properties rather than a single property" (Exhibit R-1, p 5). This is supported by section 2 of MRAT.

2. The Board is persuaded that Wal-Mart is a major anchor at the subject mall, thereby making the centre something more than a "Community Centre". However, the Board is not persuaded that the presence of Wal-Mart transforms Capilano into a "Power centre" as argued by the Respondent. By the Respondent's own definition of a Power Centre, it is "a large Community Centre anchored by at least three, but often four or more, anchor tenants …." In the case of the subject, there is Wal-Mart on this roll number and Safeway at the other end of the mall which is on its own roll number.

3. The Board accepted the Respondent's position that the market rent applied to Wal-Mart should be reflective of the market rents applied to three other Wal-Marts in the City. By physically terminating access to the mall at its own initiative, Wal-Mart in essence created a "stand-alone" store, similar to the other Wal-Marts. However, the 130,718 square foot Wal-Mart at 137 Avenue, with an applied market rent of $10.50 per square foot, is much closer in size to the subject (141,670 square feet) than the other two Wal-Marts that are in excess of 200,000 square feet and that have an applied market rent of $11.50 per square foot. The Board is persuaded that the applied market rent to the subject Wal-Mart should be $10.50 per square foot. The Board finds that it would be inequitable to apply a market rent of $3.50 per square foot to the Wal-Mart at the subject property while other Wal-Marts have an applied market rent of either $10.50 or $11.50 per square foot.

4. The Board notes that the typical CRU vacancy rate applied to similar properties is 10%. In recognition of the higher CRU vacancy rate experienced by the subject, the Respondent carried forward a 15% rate determined by a 2010 CARB hearing. The CRU vacancy rate as provided to the City's Request for Information for 2009 was 21.0%, and increased somewhat to 23.2% for 2011. The Board is persuaded that an increased CRU vacancy rate of 5% takes into consideration the higher vacancies of the subject, but at the same time adheres to the principles of mass appraisal.

5. The Board is persuaded by the Complainant's argument that there is a greater investment risk at the Capilano Mall than the 8.0% that the City stated, and therefore applies an 8.5% capitalization rate to the subject. This is at the high end of the rates applied by the City to

the comparable malls. The Board recognizes that the vacancy at the time of sale of the subject was 4.39% with a cap rate of 6.27%. However the current CRU vacancy is 23.2%, justifying an increase in the cap rate to better reflect the investment risk.

6. The Board notes that the NOI at the time of sale in February 2007 was $2,570,524 with a vacancy of 4.39%, while the NOI as at July 1, 2010, using the original market rent of $3.50 per square foot, was nearly the same at $2,519,251 (excluding Safeway). This supports the City's original assessment before equity considerations for the Wal-Mart space.

7. The Board was persuaded that the value attributed to the land only is fair and equitable. Of the four comparable sales of vacant land provided by the Respondent, the Board placed most weight on sale number four that occurred April 2009, which was the closest to the subject in size at 255,543 square feet. This comparable sold for a time-adjusted sale price of $32.90 per square foot, supporting the assessment of the land value of the subject at $26.10 per square foot.

8. The Board was not persuaded by the Complainant's argument that the vacancy shortfalls should be subtracted from the applied market rents since all rents were either gross or semi-gross. Even the Complainant stated that by doing so, and in essence making the subject property worthless, prompted a natural question – is this a real adjustment? As well, in arriving at the requested assessment of $19,800,000, the Complainant did not adjust any of the market rents applied to the other space in the mall, but rather focused only on the Wal-Mart space, which is owner-occupied.

9. The Board placed little weight on the Complainant's discussion of the comparable purchasing power per square foot for the thirteen identified shopping centres. In the Complainant's excerpts from a document produced by the Canadian Directory of Shopping Centres (C-2, pages 20-22), no mention is made of purchasing power per square foot for any of the described shopping centres. What may be a more relevant factor is the "household income" for the primary households in the area, and this factor is one of the factors used by the Respondent in setting the capitalization rates for the different shopping centres.

10. The Board notes that the subject property was purchased by the current owners February 27, 2007 for $41,000,000, time-adjusted to $47,244,300 to the July 1, 2010 valuation date, although this value includes Safeway which is on its own roll number and not subject to this complaint. The Board also notes that the owners spent a further $7,350,000 on additions/renovations and new construction subsequent to the sale as shown by the building permits issued. Although the Respondent stated that the value of these additions are not added to the value of the property, but rather the increased improvements are reflected in the market value, it would be fair to accept that there would be an added value. The Board therefore places less weight on the Complainant's request to reduce the 2011 assessment to $19,800,000. This amount would be slightly more than 50% of the time-adjusted sale price of the subject (excluding Safeway), would appear to give no value to the $7,350,000 spent on additions/renovations and new construction, and would be less than the assigned value for land only.

11. The Board is persuaded that a revised assessment of the subject property at $40,795,500 is fair and equitable.

DISSENTING OPINION AND REASONS

There was no dissenting opinion.

Dated this 2nd day of August, 2011, at the City of Edmonton, in the Province of Alberta.

____
Hatem Naboulsi, 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.

cc: EDMONTON EAST (CAPILANO) SHOPPING CENTRES LIMITED