ASSESSMENT REVIEW BOARD

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July 22, 2010

NOTICE OF DECISION NO. 0098 69/10

AEC INTERNATIONAL
112-1212 1 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 20, 2010 respecting an appeal on the 2009 Annual New Realty Assessment.

Roll Number	**Municipal Address**	**Legal Description**
9152109	5004 98 Avenue NW	Plan: 2542NY Block: 3 Lot: 1
Assessed Value	**Assessment Type**	**Assessment Year**
$36,322,000	Annual - New	2009

Before:

Robert Mowbrey, Presiding Officer
Ron Funnell, Board Member
Reg Pointe, Board Member

Persons Appearing: Complainant

Cameron Hall, AEC International

Persons Appearing: Respondent

Brennen Tipton, Assessment and Taxation Branch
Cameron Ashmore, Law Branch

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.

During the hearing, the Complainant challenged the Respondent in making actual vacancy rates on community shopping malls available. The Respondent cited FOIP and would release the information if the Board requested. The Complainant stated that he did not need to see the information and was agreeable if the information was made only available to the Board.

The Board recessed and determined that they would only review the evidence presented to them.

ISSUE(S)

1. Is the subject property equitably assessed using an 8% cap rate?
2. Is the subject property equitably assessed using a 10% vacancy rate?
3. Is the leasable space appropriately allocated to the proper usage and rental rates?
4. Is the vacancy shortfall of 1.5 times appropriate?

BACKGROUND

The subject property is known as the Capilano mall located in South East Edmonton at 101 Avenue and 50 street. The mall is an older shopping mall built in 1966. It totals 336,870 sq. ft. and is enclosed.

Wal-Mart is an anchor tenant and at the other end is Safeway which is a 48,000 sq. ft. building, on separate title, and is independently assessed.

LEGISLATION

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

S.467(1) An assessment review board may make any of the following decisions:
(b) make a change with respect to any matter referred to in section 460(5);

(c) decide that no change to an assessment roll or tax roll is required.

S.467(2) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration assessments of similar property or businesses in the same municipality.

POSITION OF THE COMPLAINANT

The Complainant advised the Board that Capilano mall is an older shopping mall located next to some of the heavier non-residential parts of Strathcona County, including refinery row. It is located in one of the weakest demographic areas, with the lowest purchasing power of all community malls in greater Edmonton.The mall itself contains 336,870 sq. ft. with a Safeway grocery store open to the mall at one end and a Wal-Mart store, not open to the mall, at the other end. A Winners store, open to the mall, is also located at the same end as the Wal-Mart.

The Complainant submitted that the closing off of the Wal-Mart store from the mall in 2006 effectively left the mall without any real anchor tenants. All CRUs located in this dead-end leg now struggle to survive without anchor traffic. The mall is suffering severe obsolescence and is dysfunctional.

The Complainant identified three key concerns:

1. Ensuring the rentable areas are correctly specified and categorized,
2. Ensuring that the most representative capitalization rate is used, and,
3. Ensuring that the correct vacancy rates are used.

The Complainant advised the Board that upon review of the rent roll at July 1, 2009 and applying the correct rental rates, the rental revenue would be reduced by $41,952 (C1, page 13). Making this change alone would reduce the assessment by $462,000.

The Complainant advised the Board that the most common approach to value for income producing property is the direct capitalization method (C1, page 14). To use this method, a reasonable cap rate must be applied. In the last 4 years, at July 2009, the typical cap rate range for community centres was 8.0% to 9.6%.

The sale of a 50% interest in 102 Street Centre in October 2009 was at an 8.0% cap rate. This is a premiere quality medical office/ retail plaza and should be lower than the appropriate rate for Capilano mall.

North Town mall sold in mid – 2006 at a 12.2% cap rate. and reflects a risk premium of 5% over the lower end of the typical cap rate range. Capilano mall's factual circumstances are not much different or better than North Town mall.

Baseline village, although not in the municipality of Edmonton proper, is of great relevance as it traded on May 28, 2009 for a 9.6% cap rate. This sale is perhaps the best evidence of market cap rates for typical large community malls as at July 1, 2009.

If one selects a risk premium for Capilano mall, regardless of serious factual and physical circumstances of the property, as though it were simply typical but tending towards the higher end of the risk range, with a 1% premium, then 9% is appropriate. Using a 9% cap rate produces an assessment of $31,875,000 (C1, page 22).

The Complainant advised the Board that Capilano mall's 2009 vacancy rate, at 21% (C1, page 24), was more than double the typical rate. The typical CRU vacancy rate, applied by the assessor is 10%. Capilano's vacancy circumstances are not typical nor are they driven by typical factors. Over the last three years, the stabilized vacancy is 15.4%. No typical purchaser would ignore that actual, ongoing vacancy problems exist. Applying a rounded 15% vacancy rate to the CRUs, with a 9% cap rate results in a value of $27,619,000 (C1, page 25).

In addition to adjusting for the vacancy rate, one must reflect the increasing proportion of unrecoverable operating costs as vacancy climbs. If vacancy is 1.5 times typical, then the unrecoverable operating expenses will also be about 1.5 times typical levels. Applying this factor to the vacancy shortfall results in a value of $23,762,000 (C1, page 27).

POSITION OF THE RESPONDENT

The Respondent provided a community shopping centres capitalization chart (R1, page 28) which outlined cap rates of 8% community shopping centres including the subject property.

The Respondent advised the Board that the subject property has been assessed fairly and equitably in accordance with section 293 of the MGA applying the valuation standards and procedures set out in the *Matters Relating to Assessment and Taxation Regulation,* Alberta Regulation 220/2004.

The Respondent maintained that the assessment reflects the characteristics and physical condition of the subject property in accordance with section 289(2) of the MGA applying the valuation standards for this property type. The Respondent referred to 2010 Law and Legislation Brief (II. The Valuation Standard Market Value (R1, page 3).

Having been challenged by the Complainant as to comparisons to other similar properties, the Respondent advised the Board that they do consider comparable properties when applying the mass appraisal process (R1, page 5).

In compliance with sections 299 and 300 of the MGA, a request made by the Complainant on March 3, 2010 was responded to on the same day. A further request by the Complainant for s.300 information on February 25 was responded to February 26, 2010 where an income performa was provided.

The Respondent submitted that they have classified the subject property correctly in accordance with the mass appraisal process. Having been challenged by the Complainant on the specific issue of rental lease rates, the Respondent maintained that these rates are appropriate typical market rental rates. The Respondent referred to R1, page 117 to 167, 2010 Law and Legislation Brief (II. The Valuation Standard Market Value).

In response to a challenge by the Complainant regarding non recoverable allowances applied to the subject property that should be increased, the Respondent advised the Board that the typical 2% structural repair allowance is considered to be appropriate (R1, pages 22 and 23).

A 2007 traffic flow map (R1, pages 33 and 34) showing average annual week day traffic indicates that the traffic flow around the subject property is the highest of all shopping centres included in the Complainant's evidence.

The Respondent submitted that the vacancy shortfall of 1.5 is not a valuation procedure and should be given little or no weight by the Board. The Respondent further submitted that the Board should not place any weight on schedule B "Relative Purchasing Power Demographics" (C1, page 33).

DECISION

The decision of the Board is to reduce the assessment from $36,322,000 to $31,346,000.

REASONS FOR THE DECISION

1. Is the subject property equitably assessed using an 8% cap rate?

The Board was persuaded by the Respondent's chart (R1, page 28) containing community shopping centre lease rates and notes that Capilano mall was assessed utilizing an 8% cap rate. This inventory includes enclosed malls in excess of 100,000 sq. ft.

The Board notes that the subject property Capilano mall has the same cap rate as Millwoods Town Centre and Northgate Centre. The cap rate of the subject property was 6.27% at the time of the sale February 2007.

Although the Complainant stated that the cap rate of the subject property should be 9%, this is based on the premise that the subject property should be assessed at a rate greater than City Centre East and West malls which are assessed at 8 ½ %.

The Board did not glean any supporting evidence to warrant a 9% cap rate for the subject property. The Complainant did not demonstrate that an inequity exists between the Capilano mall and the other enclosed malls. The Board gave little weight to the Complainant's chart, C1 detailing community malls and shopping centres older than 15 years. The Complainant stated he does not know which malls are enclosed and which malls are not. A number of properties are not comparable to the enclosed community mall over 100,000 sq. ft.

However, the Board did note that with 4 sales occurring during the last 2 years (not including Baseline village), the available cap rate at time of sale was 7.6%. The Board is convinced the cap rate of 8% for the subject property is fair and equitable (3rd Party sources: R.1 page 94 – Colliers ED Community Halls 7¼ to 8%; R1, Page 96 – CB Richard Ellis 7.2 to 8 ½ %).

2. Is the subject property equitably assessed using a 10% vacancy rate?

The Board accepts the fact that the sale of the subject property is the best indication of market value. Authorities in R1 B.O. MGB 060/10 enunciate this position:

Ontario Regional Assessment Commissioner, Region No. 11 v. Nesse Holdings Ltd (1984), 47 O.R. (2d) 766 (Ont. Div. Ct.) at p. 767:

"It seems to me to be worth remembering that where the Assessment Act, R.S.O. 1980, c. 31 requires the determination of what a property might be expexted to realize if sold on the open market by a willing seller to a willing buyer (s.18(2)), the price paid in a recent sale of the subject property itself, where, as in this case, there are neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property."

R.1 Page 113:

"I think that generally speaking the recent sales price, if available as it was in this case, is in law, and in common sense, the most realistic and most reliable method of establishing market value."

The authorities speak in terms of recent sales. The Board is not convinced that a sale of February 2007 is an indication of a recent sale and circumstances including the economy, and increasing vacancy rates have to be considered. Therefore, the Board does not place a lot of weight on the sale of the subject property. With substantial increased vacancy rates in the last year, the Board reviewed the 10% vacancy rate applied to the subject property. The vacancy rate was atypical and does not fit within the mass appraisal process.

The Board notes the Respondent states the vacancy rate is 17.73% for the assessment year (R1, page 46) and the Complainant states the vacancy rate as of July 1, 2009 rent roll is 21%, more than double the typical rate.

In addition, the Board notes that 19.8% of the leases of the CRUs are on a month to month basis (C1, page 24) making the revenue stream tenuous at best. The vacancy rate is 14.29% for the last 3 years.

The Board is convinced that the typical vacancy rate allowance is inadequate and should be increased to 15%. The Board accepted that the potential gross income for the subject was $3,749,500 (R1, page 23) allowing for a 15% CRU vacancy level and vacancy shortfall produces a value of $31,346,062.

3. Is the leasable space appropriately allocated to the proper usuage and rental rates?

There appears to be some accommodation between the Respondent and the Complainant as to the usage allocation of a few properties including some minimal space adjustments. The Board accepts the Respondent's recommendation (R1, page 23) and will not render any further decision on this issue.

4. Is the vacancy shortfall of 1.5 times appropriate?

The Board was not convinced that the vacancy shortfall allowance should be calculated at 1.5 times the vacancy level. The Board was not presented with any evidence that indicated this was an acceptable valuation method and therefore applied a vacancy shortfall of 15%, the same as the vacancy level, to the CRU leaseable space.

DISSENTING DECISION AND REASONS

None.

Dated this 22nd day of July, 2010 at the City of Edmonton, in the Province of Alberta.

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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: Municipal Government Board.
Edmonton East (Capilano) Shopping Centres Ltd.