Edmonton Composite Assessment Review Board

Citation: AEC INTERNATIONAL INC. v The City of Edmonton, 2012 ECARB 1064

Assessment Roll Number:	9152109
Municipal Address:	5004 98 AVENUE NW
Assessment Year:	2012
Assessment Type:	Annual New

Between:

AEC INTERNATIONAL INC.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Robert Mowbrey, Presiding Officer
Jack Jones, Board Member
Pam Gill, Board Member

Preliminary Matters

[1] At the outset of the hearing, the parties indicated that they had no objection to the composition of the Board. Each of the Board members indicated that they had no bias with respect to this complaint.

[2] At the request of the Respondent, the witnesses giving evidence and or testimony were either sworn in or affirmed, the choice being that of the individual.

Procedural Matters

[3] At the outset of the hearing the Respondent indicated that one of the side members, Pam Gill, had business dealings with their independent appraiser, Ed Jackson during the course of her real estate practice.

[4] Ms. Gill indicated that she was not the Pam Gill in question, the parties were satisfied and the hearing continued.

[5] Upon the commencement of the City of Edmonton's response submission, the Complainant raised an objection to the Respondent's evidence. The Complainant argued that they were not aware of who was going to testify and to what, and that the evidence lacked sufficiency.

[6] The hearing was briefly adjourned and upon deliberation the Board rendered its decision to allow the Respondent to present its evidence and that as long as it was properly disclosed it would be allowed.

[7] During the testimony of Mr. Ed Jackson, a conversation he had with the subject property's manager about future plans for the mall was objected to by the Complainant. The objection stated that the future plans were neither a part of the appeal nor the subject of Mr. Jackson's report and therefore any conversations should be disregarded by the Board.

[8] The Respondent indicated that they could produce two witnesses to the conversation, and the Complainant indicated that they also had a witness to rebut the Respondent's witnesses if need be. Upon reconvening after the lunch hour, the Board addressed the parties and stated that if the parties were looking for some direction on the matter, the Board would place emphasis on what was included in Mr. Jackson's report and that the appropriate weight would be placed on the testimony that dealt with evidence not included in his report, it was left up to the parties to choose the best course of action. Both parties decided not to produce their witnesses to the conversation between Mr. Jackson and the property manager.

[9] Upon the commencement of the rebuttal, the Respondent raised an objection to a portion of the material as being new evidence, specifically, pages 9, 11, 12, 13-36, and the chart at the bottom of page 38 (Zellers locations Edmonton area) and all of Appendix A of Exhibit C-4.

[10] The Complainant argued that the rebuttal was responding to evidence that was brought in by the Respondent's witness, Mr. Ed Jackson. He referred to the Abbotsfield Mall property in his report.

[11] After a brief adjournment the Board decided that the Respondent could discuss the Abbotsfield Mall property, however, the lease rates of the other properties was new evidence and therefore would not be allowed. The Complainant could have included the information alongside Exhibit C-1, Tab J, page 177 and Exhibit C-2, page 95 as part the original evidence submission.

Background

[12] The subject property is an enclosed shopping centre, commonly known as Capilano Mall, built in 1966. It is located in the Ottewell neighbourhood of Edmonton, south of Terrace Road and 101st Avenue, north of 98 Avenue and west of 50th Street. The total building size is 336,955 square feet with 11,881 square feet of office space, 13,990 square feet of restaurant pads and 169,771 square feet of anchor and junior anchor tenant space, with the remainder of space being mixed CRU's.

[13] The 2012 assessment was calculated using the Income Approach.

[14] Both parties indicated that the Income Approach was the appropriate methodology for assessment of the subject (Exhibit R-1, pages 358-359 and Exhibit C-1, page 77).

Exhibits

[15] Complainant's Exhibits

Exhibit	Description	Number of Pages
C-1	Complainant Brief	402
C-2	Complainant Power Point	95
C-3	Complainant Legal Submissions	234
C-4	Complainant Rebuttal	856
C-5	Complainant Rebuttal Power Point	30
C-6	Response Submission of the Complainant	144
	TOTAL PAGES	1761

[16] Respondent's Exhibits

Exhibit	Description	Number of Pages
R-1	Respondent Assessment Brief	410
R-2	Respondent Appraisal Report	136
R-3	Curricula Vitae: Ed Jackson	2
R-4	Appraisal Rent Roll- revised	8
R-5	Appraisal Cash Flow- revised	2
	TOTAL PAGES	**558**

Issue(s)

[17] The Board considered the following issues:

- Issue #1: What is the correct categorization of the Wal-Mart store?
- Issue #2: Does the Wal-Mart assessed leased rate reflect fair market value?
- Issue #3: Does the office space assessed leased rate reflect fair market value?
- Issue #4: Does the Sawmill restaurant assessed leased rate reflect fair market value?
- Issue #5: What is a fair and equitable capitalization rate for the subject property?
- Issue #6: What is the fair market value for the subject property?

Legislation

[18] The Municipal Government Act reads:

> ***Municipal Government Act*, RSA 2000, c M-26**
>
> s 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;
>
> 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.

[19] ***Matters Relating to Assessment and Taxation Regulation,*** AR 220/2004

[20] ***Matters Relating to Assessment Complaints Regulation,*** AR310/2009

Issue #1- What is the correct categorization of the Wal-Mart store?

Position of the Complainant

[21] The Complainant presented evidence and argument to the Board in support of their position that the Wal-Mart store has been incorrectly categorized by the City of Edmonton as a power centre. The Complainant noted that up until the 2011 assessment the Wal-Mart space had been correctly assessed as an anchor tenant within a community shopping centre at a rate of $3.50 per square foot (Exhibit C-3, page 2). This changed with the 2011 assessment at a CARB hearing when the City requested an assessed rate of $11.50 per square foot which was subsequently reduced to $10.50 per square foot by the CARB. The basis for the rate revision was the construction of a demising wall in 2006 which separated the Wal-Mart from the mall. The City determined this separation created a standalone store which then fell into the power centre category.

[22] In the 2012 assessment the City has continued the categorization of the Wal-Mart space as a power centre and applied a market value lease rate of $11.50 per square foot. The Complainant is requesting a revised lease rate of $7.18 per square foot which is the current lease in place for the space as of January 2011.

[23] The Complainant contends that Capilano Mall remains a community shopping centre which is anchored by Wal-Mart along with Safeway as a shadow anchor. The mall has been and continues to encounter problems with high tenant turnover and vacancy which has led to expense recovery shortfalls.

[24] The Complainant commissioned an independent appraisal of the subject property (Exhibit C-1) for the purposes of estimating the market value of the subject property with respect to the 2012 property assessment.

[25] The Complainant presented evidence (Exhibit C-1, pages 44 to 60) which outlined the "Criteria for the Description of Shopping Centres". The evidence indicated that there are ten principal shopping centre types, which are grouped into four categories: traditional, specialty, hybrid and mixed use. A community centre (Exhibit C-1, page 47) such as what the Complainant categorizes Capilano Mall falls into the traditional shopping centre type whereas a power centre (Exhibit C-1, page 49) such as what the Respondent categorizes Capilano Mall falls into the specialty shopping centre type. Community centre's are typically a cluster of attached retail units and may also include outparcels such as service stations and restaurants and have a primary trade area of five to eight kilometers. Power centre's are typically three or more freestanding big box retailers with the potential of other smaller specialty retailers on the site and have a primary trade area of eight to twenty kilometers. The above definitions for community centre's and power centre's were also referenced in the "Canadian Real Estate Standard" dated Dec. 2010 (Exhibit C-1, Tab F, pages 89 to 97).

[26] In response to the Respondent's suggestion that Wal-Mart spent $5,000,000 in renovations to upgrade the store to a super centre the Complainant noted that the renovations included roof repairs, asbestos removal and HVAC equipment so that in fact a large portion of the funds were spent to address building problems which were a result of age (original 1966 construction).

[27] In summary the Complainant noted that Capilano Mall has been and continues to be a community shopping centre and that the addition of a demising wall at the Wal-Mart has not changed the category of that portion of the mall to that of a power centre. The Complainant requested the 2012 assessment of the Wal-Mart be revised downward to reflect the market value of a community shopping centre.

Position of the Respondent

[28] The Respondent presented evidence and argument in support of their position that the Wal-Mart store at Capilano Mall should be categorized and assessed as a power centre. The Respondent noted that in 2010 Wal-Mart completed $5,000,000 in renovations to upgrade the store to a super centre (Exhibit R-1, pages 5 & 15).The Respondent advised that the store upgrades in conjunction with the addition of a demising wall which separated the Wal-Mart store from the balance of the mall in essence created a power centre situation for the Wal-Mart portion of the mall. Therefore the assessment category and the associated market lease rate for the Wal-Mart were changed from a community centre anchor to a power centre.

[29] The Respondent presented three market lease and four equity comparables (Exhibit R-1, page 42) to support the 2012 assessment of the subject property at $11.50 per square foot. The comparables presented were all free standing stores categorized as power centres.

[30] The Respondent presented definitions of shopping centre types from the Urban Land Institute (Exhibit R-1, pages 363 to 365). A power centre is defined as a large community centre with more than 250,000 square feet of space, but often four or more anchor tenants that occupy approximately 75% of the gross leasable area while a community centre is typically an enclosed structure built around a junior department store, variety store or discount store as a major tenant and usually includes a supermarket. A community centre may also include pad sites.

[31] During questioning the Respondent was asked what the categorization of Wal-Mart would be if the demising wall were to be removed. The Respondent answered that the Wal-Mart would revert back to a community centre as would the associated market lease rate.

[32] The Respondent also commissioned an independent appraisal of the subject property (Exhibit R-2). The appraisal categorizes the subject property, including the Wal-Mart portion as a “Regional or Community Shopping Centre” (Exhibit R-2, page 29). The appraisal also notes that “In the event the site were vacant, the highest and best use would represent that of a commercial development site for a shopping centre of big box development” (Exhibit R-2, page 32).

[33] The appraisal categorized the Wal-Mart as a large anchor tenant and determined a lease rate of $4.50 (Exhibit R-2, page 56) was appropriate to use in the valuation noting that lease rates for anchor tenants tend to be at lower rates than standard retail. The appraisal noted that the closed off access from the Wal-Mart to the mall would have an impact on the value of Wal-Mart as a mall anchor.

[34] In summary the Respondent noted that the separation of the Wal-Mart from the mall as well as the store upgrades has created a situation whereas the Wal-Mart categorization as a power centre correctly reflects the current condition for assessment purposes. The Respondent requested the 2012 assessment of the Wal-Mart be confirmed at the market rate applied.

Decision

[35] The decision of the Board is that the correct categorization of the Wal-Mart for the 2012 assessment is as a community centre anchor and that the appropriate market lease rate for that category of shopping centre anchor should be applied to the Wal-Mart portion of the subject property valuation.

Reason for the Decision

[36] After review and consideration of the evidence and argument presented by both parties the Board determined that the correct categorization of the Wal-Mart for the 2012 assessment is as a community centre anchor and that the appropriate market lease rate for that category of shopping centre should be applied to the Wal-Mart portion of the subject property valuation.

[37] The Board does not agree with the Respondent that the mere addition of a demising wall separating Wal-Mart from the balance of the mall would create a power centre. The definitions provided by both parties (Exhibits C-1, page 44 to 60 & R-1, pages 363 to 365) as well as an

analysis from an independent appraiser (Exhibit R-2, page 29) support the categorization of the Capilano Wal-Mart as a community centre anchor.

[38] The Respondent acknowledged that the main reason behind changing the category of the Wal-Mart to a power centre in the 2012 assessment was the existence of the demising wall and that should the demising wall be removed the categorization would revert back to that of a community centre anchor.

[39] Furthermore the Respondent's own independent appraiser categorized the subject as a community centre and not a power centre. The appraiser also gave the opinion that the Wal-Mart was still an anchor tenant, although diminished.

[40] The Board further determined that the renovations undertaken by Wal-Mart do not transform the store into the power centre category. It was acknowledged by both parties that a significant portion of the cost of the renovations was directed towards dealing with issues associated with an aging building such as roofing, asbestos removal and HVAC equipment.

[41] The Board acknowledges and accepts the testimony of the Respondent's own independent witness, that the separation of the Wal-Mart from the balance of the mall may have a detrimental effect on the potential flow of traffic and subsequent business exposure to the mall retail components but would not increase the business potential for Wal-Mart beyond that of a typical community mall anchor.

Issue #2: Does the Wal-Mart assessed leased rate reflect fair market value?

Position of the Complainant

[42] As outlined in Issue #1 concerning the correct categorization of the Wal-Mart, the Complainant argued that Wal-Mart in Capilano Mall should be categorized as a community centre anchor and not as a power centre as was done in the 2012 assessment and as such the assessed lease rate should be reduced to suit the correct category.

[43] The Complainant presented evidence and argument in support of a requested revised lease rate of $7.18 per square foot which is the current lease in place for the space as of January 2011.

[44] The Complainant presented eight free standing Wal-Mart store leases (Exhibit C-1, page 86) which ranged from $7.05 to $12.84 per square foot compared with eight Wal-Mart leases for mall anchor stores which ranged from $4.07 to $7.18 per square foot to illustrate the variance between the lease rate for a freestanding vs. a mall anchor category of store.

[45] The Complainant also presented three free standing Canadian Tire leases (Exhibit C-1, page 89) compared to a Canadian Tire mall attached store to illustrate the variance between the lease rate for a freestanding vs. a mall anchor category of store. The average free standing store lease ranged from $13.24 to $15.60 per square foot whereas the mall attached store average lease rate was $5.72 per square foot.

[46] The Complainant noted that the Wal-Mart lease at the subject site (Exhibit C-1, page 91) was $3.50 per square foot and increased to $7.18 per square foot after the completion of renovations in January 2011.

[47] The Complainant presented twenty two equity comparables (Exhibit C-1, Tab J, page 177) to illustrate the difference in range of value between freestanding and mall anchor stores. The assessed value of freestanding stores ranged from $10.00 to $11.50 per square foot whereas the mall anchor store assessed values ranged from $5.00 to $7.00 per square foot.

[48] The Complainant (as referenced in Issue #1) reiterated that the 2012 assessment categorization of the Wal-Mart as a power centre is incorrect and the proper categorization is that of a mall anchor in a community shopping centre.

[49] In rebuttal (Exhibit C-4, page 8) the Complainant referenced the Respondent's anchor store lease comparables (Exhibit R-2, page 56) to illustrate the variance between lease rates for freestanding stores vs. mall attached anchors. The freestanding store leases ranged from $7.10 to $13.78 per square foot compared to the mall attached store lease at $4.22 per square foot. It was noted the mall attached lease (Abottsfield) was for a Wal-Mart store with a similar circumstance to the subject in that the Wal-Mart store is separated from the balance of the mall by a demising wall.

[50] The Complainant noted that all of the comparables presented by the Respondent (Exhibit R-1, page 42) were freestanding stores (Exhibit C-4, page 37) whereas the subject property is a mall attached store.

[51] The Complainant also argued that the Respondents market lease and equity comparables (Exhibit R-1, page 42) were significantly different from the subject property with respect to age, size, location as well as the types of products and services offered.

[52] The Complainant acknowledged that Wal-Mart is a joint venture owner of Capilano Mall; however, joint venture ownership by anchor tenants is generally common in mall situations and does not preclude lease rates being determined at current market rates.

[53] In summary the Complainant requested the market lease rate applied to the 2012 assessment be reduced from $11.50 to $7.18 per square foot which is the current lease rate in place as of January 2011 and falls in line with the market lease and equity range of comparable mall attached properties.

Position of the Respondent

[54] As outlined in Issue #1 concerning the correct categorization of the Wal-Mart, the Respondent argued that Wal-Mart in Capilano Mall should be categorized as a power centre and as such a market lease rate of $11.50 per square foot has been equitably applied in the 2012 assessment.

[55] In support of the market lease rate the Respondent provided three market lease comparables and four equity comparables (Exhibit R-1, page 42). The market lease comparables ranged from $13.00 to $14.60 per square foot and the equity comparables ranged from $11.50 to $12.50 per square foot.

[56] The Respondent also provided market lease rates for large size anchor tenants (Exhibit R-2, page 56) which ranged from $5.50 to $13.78 per square foot.

[57] The Respondent argued that the lease rate presently in place for the Wal-Mart space ($7.18 per square foot) is not indicative of market value as Wal-Mart is a joint venture owner (Exhibit R-1, pages 164 to 182) of Capilano Mall and has therefore negotiated a lease with itself.

[58] In summary the Respondent requested the assessed 2012 lease rate for the Wal-Mart of $11.50 per square foot be confirmed.

Decision

[59] The decision of the Board is to reduce the market lease rate for the Wal-Mart portion of Capilano Mall from $11.50 to $7.18 per square foot.

Reasons for the Decision

[60] With the decision of the Board with respect to Issue #1- that the correct categorization of the Wal-Mart is as an anchor store in a community based mall, the Board then had to determine the appropriate lease rate for the Wal-Mart space for the 2012 assessment.

[61] After review and consideration of the evidence and argument presented by both parties the Board determined that a lease rate of $7.18 per square foot was appropriate for the Wal-Mart space.

[62] The market lease rates and the equity lease rates presented by both parties presented a clear delineation between freestanding stores and mall attached stores. The range for larger freestanding stores was generally from $10.00 to $14.60 per square foot whereas the range for larger mall attached stores was from $5.00 to $7.00 per square foot.

[63] The Board noted in particular that two stores were very similar to the subject Wal-Mart with respect to being mall attached but not having mall access. These were Abbottsfield (Exhibit R-2, page 56 & C-4, page 8) and Canadian Tire- Millwoods (C-1, page 89), with current lease rates of $4.22 and $6.11 per square foot respectively. These lease rates in particular were supportive of the Complainant's request of a lease rate of $7.18 per square foot and further support came from the mall attached market lease and equity comparables noted above.

[64] The Board determined that the market lease rate and equity comparables provided by the Respondent (Exhibit R-1, page 42) were not similar to the subject property with respect to type, size or age and did not support the 2012 assessment of the subject property.

[65] The Board finds that a revised lease rate of $7.18 per square foot for the Wal-Mart store for the 2012 assessment is fair and equitable.

Issue #3: Does the Office Space assessed leased rate reflect Fair Market Value?

Position of the Complainant

[66] The Complainant filed this complaint on the basis that the subject assessment regarding the lease rates on the office space is in excess of market value. In support of this position, the Complainant provided three recent leases for office space from the subject property (Exhibit C-1 pages 103 and 105).

[67] Two of the three leases commenced in July 2010 and the third lease commenced in March 2011. Two of the three leases were signed for $6.00 per square foot and the third lease was signed for $7.00 per square foot.

[68] The Complainant requested the Board amend the 2012 assessment of office space lease rates from $13.00 per square foot to $7.00 per square foot.

Position of the Respondent

[69] In defending the office lease rate, the Respondent provided the Board with five typical lease comparisons for office space (Exhibit R- 1 page 44). The average of the five lease comparables was $14.87 and the median was $14.50 per square foot.

[70] The Respondent further provided the Board with four assessed lease rate comparables to the subject property (Exhibit R-1 page 44). Three of the four assessed lease rate office comparables were in a mall and the fourth assessed lease rate office comparable was in a power centre. The assessed leased rates for office space ranged from a low of $12.00 per square foot for fair condition to a high of $16.50 per square foot for good condition space.

[71] In addition, the appraiser, commissioned by the Respondent, provided the Board with eight average lease rates for second floor office space (Exhibit R-2 page 56). The office lease rates included both new leases and renewal leases. The assessor indicated that office leasing within an enclosed mall is difficult to obtain as comparable leasing is relatively infrequent. The office rates range for a low of $16.00 per square foot to a high of $33.00 per square foot.

[72] The second floor office space within the subject shopping centre is considered less accessible relative to standard office leasing and a lower rate would typically apply. Therefore, overall a rate of $9.00 per square foot for new leasing and $7.00 per square foot for renewals will be utilized.

[73] During cross-examination of the Complainant by the Respondent, the Complainant was asked if they looked outside the subject property for office leases. The Complainant stated no, as the best evidence is what the actual property will lease for.

[74] The Respondent further asked why one of the leases was so short and the Complainant did not know, but stated that a five year term was normal.

[75] The Respondent asked the Complainant if the Complainant had talked to anyone locally and the Complainant stated that the leasing strategy is done through international centre's leasing shopping conferences and brochures have been given out to various brokers.

[76] The Respondent requested that the 2012 assessment for the office space at $13.00 per square foot be confirmed.

Decision

[77] The Board confirms the 2012 assessment for the office lease space at $13.00 per square foot as fair and equitable.

Reasons for the Decision

[78] The Board was not persuaded by the Complainant's evidence on office lease rates. The only evidence before the Board from the Complainant were three existing leases within the subject property. The Complainant had no lease comparables from similar shopping centre's to establish a typical market lease rate for office space.

[79] The Board was not persuaded by the Respondent's evidence on actual lease rates for office space. The five comparables had two leases that were gross leases, which skewed the results so as to make the analysis unreliable.

[80] The Board put some weight on the Respondent's equity assessed lease comparables for office space. The equity assessed lease comparables ranged from a low of $12.00 per square foot to a high of $16.50 per square foot.

[81] The Board put little weight on the Respondent's appraiser's evidence concerning office lease rates. The appraiser indicated that office leasing within a mall was difficult to obtain, and stated the $9.00 per square foot for new office leases and $7.00 per square foot for renewals would be utilized.

[82] The onus of showing the office space assessment is incorrect rests with the Complainant. The Board finds the Complainant's evidence was neither sufficient nor compelling to convince the Board as to the incorrectness of the office space assessment.

Issue #4: Does the Sawmill restaurant assessed leased rate reflect fair market value?

Position of the Complainant

[83] The Complainant filed this complaint on the basis that the subject assessment regarding the lease rate on the Sawmill restaurant is in excess of market value. In support of this position, the Complainant provided the actual lease of the restaurant. The lease was for $25 per square foot. The Complainant stated the restaurant had encountered some difficulties and had

renegotiated the lease from $30 per square foot to $25 per square foot (Exhibit C-1 pages 103,105).

Position of the Respondent

[84] In defending the Sawmill restaurant lease rate, the Respondent provided the Board with nine actual lease comparisons to the restaurants regarding the subject property. The actual leases had an average of $31.88 per square foot and a median of $32.50 per square foot, compared to the assessed value of $30.00 per square foot for the subject restaurant (Exhibit R-1 page 43).

[85] Further, the Respondent provided the Board with four restaurant assessments that were in close proximity to the subject restaurant. Two of the four restaurants were assessed at $30.00 per square foot and the other two restaurants were assessed at $34.00 per square foot (Exhibit R-1 page 43).

[86] In addition, the appraiser, commissioned by the Respondent, provided the Board with five freestanding restaurant leases that included both new and renewal leases (Exhibit R-2 page 57). The restaurant leases ranged from a low of $20.00 per square foot to a high of $36.00 per square foot. The appraiser stated the subject restaurants are relatively well located and of newer construction and a rate of $30.00 per square foot for new leasing and a $28.00 per square foot for renewal is considered appropriate (Exhibit R-2 page 58).

[87] In summary the Respondent requested the 2012 assessed lease rate of $30.00 per square foot for the restaurant be confirmed.

Decision

[88] The Board confirms the 2012 assessment lease rate for the Sawmill restaurant at $30.00 per square foot as fair and equitable.

Reasons for the Decision

[89] The Board was not persuaded by the Complainant's evidence on restaurant lease rates. The only evidence the Complainant had was the actual lease of the subject restaurant within the subject shopping centre. The Complainant had no lease comparables for comparable restaurants in other similar shopping centre's to indicate the assessed lease rate was incorrect..

[90] The Board was persuaded by the Respondent's equity evidence regarding restaurant assessments. The average of the four equity restaurant leases is $32.00 per square foot, which supports the Respondent's assessment of $30.00 per square foot for the subject restaurant's assessment.

[91] As further support the Board noted that the Respondent's appraiser's evidence included actual leases that were in close proximity to the subject restaurant and these leases supported the subject restaurant assessment.

[92] The onus of showing the restaurant assessment is incorrect rests with the Complainant. The Board finds the Complainant's evidence was neither sufficient nor compelling to convince the Board of the incorrectness of the restaurant assessment.

Issue #5: What is a fair and equitable capitalization rate for the subject property?

Position of the Complainant

[93] The Complainant filed this complaint on the basis that the subject property's capitalization rate of 8% is assessed incorrectly. In support of this position, the Complainant provided the Board with a number of capitalization surveys that are summarized with Exhibit C-1 page 119. The number of capitalization surveys has been taken from third party documents (Exhibit C-1 pages 152-157 and appendix E pages 82 -87).

[94] The Complainant further provided the Board with nine sales of older community malls with over 100,000 square feet, with the appropriate capitalization rates. The nine community malls including the subject property had an average capitalization rate of 8.29% and a median capitalization rate of 7.72% (Exhibit C-1 page 120).

[95] The Complainant concluded that an 8% capitalization rate reflects the difficulties inherent in this particular property. The Complainant adjusted the 8% by an additional 1% to arrive at a total capitalization rate of 9%. The additional 1% was attributed to one-half per cent re-tenanting risk and one-half per cent for an expense recovery loss (Exhibit C-1 page 128).

[96] The Complainant requested the Board utilize a 9% risk adjusted capitalization rate.

Position of the Respondent

[97] In defending the assessed capitalization rate, the Respondent provided the Board with four sales of shopping centre's with the corresponding capitalization rates. The average of the capitalization rates is 6.69% and the average calculated adjusted capitalization rate is 5.83% (Exhibit R-1 page 69). The Respondent stated the capitalization rate was a function of the net operating income and the sale price.

[98] The Respondent provided third party documents to the Board showing capitalization rates (Exhibit R-1 pages 70-80).

[99] The Respondent provided two charts to the Board that depict both the trending of capitalization rates between 2008 -2011 and the time adjusted capitalization rates for the same period (Exhibit R-1 pages 81/82). In conclusion, the Respondent indicated the capitalization rates have been decreasing, so the capitalization rate was decreased one-half per cent from the 2011 assessment, to arrive at 8%.

[100] During cross-examination, the Respondent asked the Complainant how the Complainant arrived at a base cap rate of 8%. The Complainant stated that third party sources showed that cap rate trends were declining for well leased properties, but not for properties like the subject. The

Complainant advised the Board that intuition, judgment, and experience played a role in the establishment of the 8% cap rate.

[101] In addition, the appraiser, commissioned by the Respondent, advised the Board that the basis of capitalization rate analysis involves the extracting of ratios between the net operating incomes which a property was producing as at the time of sale to the market selling price (Exhibit R-2 page 64).

[102] The appraiser presented the Board with five sales with the corresponding capitalization rates. The cap rates ranged from a low of 6.33% to a high of 7.97% (Exhibit R-2 pages 65-70). The appraiser stated that the resulting trend in declining cap rates that has been observed as well as the specific attributes of the subject property from an investment perspective, including the overall condition, vacancy rate and the upside potential over the short term, a range in cap rates varying from 7.25% to 7.75% is deemed appropriate. Therefore, 7.5% cap rate is utilized to arrive at the market value of the subject property (Exhibit R-2 page 72).

[103] In summary the Respondent requested the capitalization rate for the 2012 assessment be confirmed at 8%.

Decision

[104] The Board confirms the 8% capitalization rate for the 2012 assessment as fair and equitable.

Reasons for the Decision

[105] The Board was not persuaded by the Complainant's evidence regarding the 9% capitalization rate. The Complainant did not provide any empirical data to support the additional one-half per cent in the re-tenanting risk nor did the Complainant provide any evidence to support the additional one-half per cent expense recovery loss.

[106] The Board put little weight on the Respondent's appraiser's capitalization rate study as three of the five comparables were not within the municipality. In addition, the appraiser made a number of errors, which required changes that made the report suspect at best.

[107] The Board placed some weight on the Respondent's capitalization rate study, which indicated a downward trend. The Board therefore, thought it reasonable that the 2011assessed cap rate of 8.5% should be reduced by one-half per cent to 8% in the 2012 assessment.

[108] The onus rests with the Complainant to provide sufficient and compelling evidence to prove the assessment is incorrect. The Complainant failed to do so.

Issue #6: What is the fair market value for the subject property?

Position of the Complainant

[109] The Complainant presented its evidence in Exhibits C-1, C-2, C-3, C-4, C-5 and C-6.

[110] The Complainant generally agreed with the Respondent's Proforma (Exhibit R-1, page 12). The Complainant differed in the fair market value of Anchor Tenant 1, Office Space, Restaurant Pad and the capitalization rate.

[111] The Complainant proposed changes to the unit values as follows:

a) Anchor tenant rate was reduced from $11.50/sqft to $7.18/sqft.
b) Office space rate was reduced from $13.00/sqft to $7.00/sqft.
c) The Restaurant pad rate was reduced from $30.00/sqft to $25.00/sqft.
d) The capitalization rate was increased from 8% to 9%.

[112] The Complainant also had a downward adjustment of $162,000 based on the previous year's CARB decision, however, agreed that it was included in error.

[113] The Complainant's market value calculation was $27,632,247.

Position of the Respondent

[114] The Respondent presented its evidence in Exhibits R-1, R-2, R-3, R-4, and R-5.

[115] The Respondent classified the subject as a Power Centre and used the Income Approach to calculate an assessment of $39,937,000 for the subject property (Exhibit R-1, page 12).

[116] The Respondent provided the Board with a value of $47,914,000 (including Safeway) using the Development Cost Approach method (Marshall & Swift Commercial Detail Report) (Exhibit R-1, pages 18-24). The Respondent noted that this was not the preferred valuation method for this type of property.

[117] The Respondent also provided the Board with a time adjusted sale price for the subject property (Exhibit R-1, page 14) which produced a value of $50,773,500.

[118] The Respondent hired an independent appraiser, Mr. Ed Jackson, to assess the subject property. The appraisal report was included as Exhibit R-2.

[119] Mr. Jackson appraised the subject property on a leased fee basis and formed an opinion of the value of the property in the amount of $43,380,000. In addition the appraiser used the direct sales comparison approach as a test of value and arrived at a value of $44,150,000.

Decision

[120] The Board decision is to reduce the 2012 assessment of the subject property to $32,514,500, which the Board considers to be fair and equitable**.**

Reasons for the Decision

[121] After review and consideration of the evidence and argument presented by both parties, the Board determined that the appropriate method for calculating the 2012 assessment for the subject property is the Income Approach.

[122] As stated in Exhibit R-1, page 358:

> "*For the purposes of the 2012 Annual Assessment, viable income producing properties were valued based on their income potential using 2010/2011 market* **triple net rental lease rates,** *not* **effective net lease rates**. *The income approach is the approach of choice, as it best reflects the typical actions of buyers and sellers when purchasing income producing properties. This approach estimates the value of a property by determining the present value of the projected income stream. Direct capitalization is the method of choice employed to value the majority of properties in the commercial inventory. Thisinvolves capitalizing the derived triple net income by an overall rate determined from comparable market sales."*

[123] And continuing on to page 359:

> "*The Income Approach was deemed to be the best method of establishing equitable valuation estimates. Ample information was provided by owners with regard to both income and expense information for the use of this methodology."*

[124] The Board placed little weight on the Respondent's Development Cost Approach as the Respondent had indicated it was not the preferred method of valuation for the subject property type.

[125] The Board placed little weight on the Respondent's time adjusted sale of the subject property as it was dated (February 2007) and recent sales establish the most realistic and reliable market value. Due to the current challenges faced by the subject property with respect to high vacancy, low lease rates and the dated facility, the Board found the time adjusted sale did not reflect the current market value of the property.

[126] The Board placed little weight on Mr. Jackson's appraisal as there were a number of errors throughout and subsequent changes had to be made. The Board found that the report was rendered unreliable by the number of changes made. The Board also had difficulty with the premise in the appraisal that the retail leases were based on the currently vacant space being 100% occupied immediately and that new leases would attract more than double the lease rates currently in place with existing tenants.

[127] The Complainant did not contest the methodology of the Income Proforma in Exhibit R-1, page 12. Only four unit values were contested by the Complainant in the Respondent's Income Proforma to generate their own valuation of the subject property.

[128] The Board used the Respondent's calculation to generate the fair market value of the property using the fair market lease rates and cap rate determined in the other sections of this decision to arrive at the 2012 assessment of $32,514,500 (Appendix A).

Dissenting Opinion

[129] There was no dissenting opinion.

Heard commencing December 3, 2012.
Dated this 14th day of December, 2012, at the City of Edmonton, Alberta.

Robert Mowbrey, Presiding Officer

Appearances:

Bridget Soulier
Gil Ludwig, Legal Counsel
John Glen
for the Complainant

Frank Wong
Cam Ashmore, Legal Counsel
Ed Jackson
for the Respondent

In Attendance:

Trafton Koenig
for the Complainant

Alaina Hempel
Mark Sandul
Tim Dmytruk
for the Respondent

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.

Roll # 9152109 (As Revised by the Board)			
Tenant Space	Area/sft	Market Rent	Total
Anchor Tenant 1	141,670	7.18	1,017,191
CRUs- Junior Anchor	28,101	7.5	210,758
CRUs<1000sft	10,857	22	238,854
CRUs 1,001 to 3,000sft	37,892	19	719,948
CRU 3,001 - 5000 sft	7,700	10	77,000
CRU 5,001 - 10000 sft	35,342	13	459,446
CRU - Restaurant	12,007	22	264,154
CRU - Banks	13,350	25	333,750
CRU - Kiosks	465	75	34,875
CRU - Food Court	1,410	39	54,990
CRU Other	-	0	0
CRU- Retail Pads	12,750	10	127,500
CRU- Bank Pads			0
CRU Restaurant Pads	13,990	30	419,700
CRU- Library	9,540	12	114,480
Office Space	11,881	13	154,453
Total Area	**336,955**		
Potential Gross Income			**4,227,098**
LESS: VACANCY ALLOWANCE			0
Anchors		1%	10,172
CRU		20%	611,091
Office		5%	7,723
Effective Gross Income			**3,598,113**
Less Expenses			0
Structural		2%	71,962
Less VACANCY Shortfall			0
Anchors	$ 1,417.00	$ 3.50	4,960
CRU	$ 36,681.00	$ 25.00	917,025
Office	$ 594.00	$ 5.00	2,970
NET Operating Income			**2,601,196**
2009 Stabilized Value			0
Capitalization Rate			**8.0%**
Value Sub-Total			**32,514,949**
	2011 Market Value Estimate		**32,514,949**
Additional Buildings			**0**
Other Value			0
	2011 Final Mkt Val Estimate		**32,514,949**
City of Edmonton Assessment			**$ 39,937,000.00**
Complainant Request			**$ 27,470,000.00**
Decision of Board			**$ 32,514,500.00**