

Central Alberta

Regional Assessment Review Board

CARB 0262 1229 2019

Complaint ID 1229

Roll No. 30000540195

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: August 16, 2019

PRESIDING OFFICER: J. DAWSON

BOARD MEMBER: D. DEY

BOARD MEMBER: V. KEELER

BETWEEN:

JOSEF AMANN / VRONI AMANN

Complainant

-and-

THE CITY OF RED DEER

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by the Assessor for The City of Red Deer as follows:

ROLL NUMBER:	30000540195
MUNICIPAL ADDRESS:	5, 5111 22 Street, Red Deer, AB
ASSESSMENT AMOUNT:	\$ 9,457,800

The complaint was heard by the Composite Assessment Review Board from the 16th day of August 2019, in Council Chambers within Red Deer City Hall in the city of Red Deer, in the province of Alberta.

Appeared on behalf of the Complainant:

A. IZARD	Agent, Altus Group
M. IZARD	Agent, Altus Group

Appeared on behalf of the Respondent:

J. MILLER	Deputy City Assessor, The City of Red Deer
M. CLEARY	City Assessor, The City of Red Deer
A. ROTH	Legal Services Department, The City of Red Deer

DECISION:

1. The complaint is accepted for the assessment of the subject property. The assessment is changed to \$9,134,600.

JURISDICTION:

2. The Central Alberta Regional Assessment Review Board ["the Board"] has been established in accordance with section 455 of the Municipal Government Act, RSA 2000, c M-26 ["MGA"], and The City of Red Deer bylaw.

PROPERTY DESCRIPTION AND BACKGROUND:

3. The subject property is a grocery store referred to as a 'Power Centre' located in south Red Deer. Originally developed in 2002, the site includes one nationally recognized grocery anchor tenant. The site area of 3.14 acres is considered fully developed with access from neighbouring properties only.
4. The income approach to valuation was utilized with the following parameters:

Description	Quantity	Rate	Potential Gross Income
Grocery Store	42,590	\$15.50	\$660,145

5. A vacancy allowance of three percent (3%) and a vacant space shortfall on operating costs of ten dollars (\$10) per square foot was applied to the retail income. Applying a two percent (2%) non-recoverable allowance resulted in a Net Operating Income (NOI) of \$614,757 which was capitalized at six-point five percent (6.5%).

PRELIMINARY AND ADDITIONAL MATTERS:

6. The Board Chair confirmed that no Board Member raised any conflicts of interest regarding the matters before them.
7. Neither party raised any objection to the panel hearing the complaint.
8. The Complainant and Respondent confirmed the complaint information before the board is solely regarding the vacancy allowance and capitalization rate applied to the retail income.
9. The Complainant and Respondent each requested that all testimony, questions, answers, oral evidence and preliminary issues presented, on like issues, for the hearing for 0262 1226 be carried forward and incorporated into this hearing as if it had occurred within this hearing. The Board finds that all testimony, oral evidence, questions, answers and preliminary issue discussions will be carried forward from hearing 0262 1226 because it was heard during the same week, between the same parties and before the same panel. Furthermore, the Board accepted Exhibit R2 for this hearing as if it were disclosed properly.

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10. The Respondent alleged during the summations of the Complainant that a new issue was put forward through the review of previous board decisions regarding the reclassification of property. The Board finds that it is not a new issue. The issue was sufficiently addressed during the summary of testimonial evidence and during the hearing through questioning. The Complainant asked questions to establish a practice the Respondent followed. This practice was found to be in error by previous Board decisions. It would have been inappropriate for the Complainant to argue and explain the relevance of those questions during the question period. Argument is appropriately placed in the summation portion of the hearing.
 11. The Complainant requested the Board to place little or no weight on the Respondent's evidence in chief, the tables and conclusions on which the Respondent relied upon to calculate the assessment. The request was because the Complainant was unable to probe the information sufficiently to effectively defend its position. The Board finds the issue is of significance and is addressed thoroughly in the reasons portion of the decision.
 12. The Complainant alleged that the Respondent engaged in an activity referred to as 'Sale Chasing'. The Board has no jurisdiction to change the way in which a municipality chooses to analyse a property and instead will base its decision on the best evidence presented.
 13. The Respondent requested that pages 7 through 30 of the disclosure document C5 be struck because it was not rebuttal of evidence provided by the Respondent. The Board finds pages 7 through 30 of C5 to be a legal brief, prepared by counsel of the Complainant, for a different disclosure document and for a hearing in Calgary in 2018. The Board strikes pages 7 through 30 of disclosure document C5 from the record.
 14. No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaint.
 15. The Board confirmed the submissions of the parties and entered the Exhibits into the record. See Appendix for details.

ISSUES:

16. The Board considered the parties' positions and determined the following question is to be addressed within this decision:

Does the evidence provided support the 6.5% vacancy allowance request of the Complainant for the subject property?

What capitalization rate is supported by evidence to calculate the market value as of July 1, 2018?

POSITION OF THE PARTIES:

General

17. The Complainant and the Respondent reviewed the subject property including street level and aerial photographs, site maps, land area and space allocations with assessed rental rates and adjustments.

18. The Complainant argued that the Respondent has submitted evidence with no probative value where the roll numbers, civic addresses and building names have been purposely obfuscated in a manner to limit the degree of transparency provided to the Complainant and the Board.
19. The Respondent argued that with its process to value on income, it must determine reasonable income inputs for the subject property and the corresponding stratifications. It uses annual information requests referred to as an Assessment Request For Information ["ARFI"]. This information is utilized along with stakeholder communication and site visits to establish assessments. With an over 80% return ratio, this extensive information is used rather than a narrow sample. By using all leasing information, it reduces risk and volatility, is fair and equitable and it adheres to legislation.
20. The Respondent provided a test of actual income performance of the subject property to demonstrate that its calculated estimate of Net Operating Income ["NOI"] found a value that represented 86% of actual revenue reported by the Complainant, whereas the requested NOI of the Complainant reaches only 81% of actual reported revenue.
21. The Respondent performed a test on a per square foot basis showing the sales it determined provided the best comparisons; Eastview Shopping Centre at \$355.00, Gaetz Avenue Crossing at \$308.46, and The Brick at \$296.04. The request of the Complainant is at \$263 per square foot while the assessment of the subject property is at \$222 per square foot.

Does the evidence provided support the 6.5% vacancy allowance request of the Complainant for the subject property?

Position of the Complainant

22. The Complainant argued that the vacancy allowance should be adjusted to 6.5% based on the comparable properties it has in evidence.
23. The Complainant provided vacancy studies of the subject property with the first report showing 4.56% vacancy considering all properties in the 'population'. A separate report was provided showing 6.57% vacancy when considering all CRU space under 100,000 square feet. A third report was prepared showing spaces greater than 20,001 but less than 100,000 square feet with a vacancy of 4.87%. A final report was provided showing vacancy of 8.50% on CRU space under 20,000 square feet.
24. An equity argument was raised regarding adjacent properties, with retail strip mall designations, receiving an 8% vacancy allowance despite competing for the same tenants in the same 'Power Centre' vicinity.

Position of the Respondent

25. The Respondent questioned the Complainant on two spaces it had reported as vacant. The first space identified as 22,810 square feet at 2610 50 Avenue, the Respondent provided evidence and testimony that it was under lease contract until December 31, 2018, was operating as a retail space until July 31, 2018 and occupied by the tenant until September 30, 2018. The second identified space at 2410 50 Avenue contained 17,938 square feet was leased as of August 2017 for a five-year period. The Respondent provided a rent roll showing the reported occupancy.

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26. The Respondent provided its five-page vacancy study that shows a 3.5% vacancy city-wide for the properties classified as 'Power Centres'. This report was backed up with a ten-year history of vacancy in 'Power Centres' showing 2.2% to 3.0% range depending if you look at it as presented or with corrections reported by the Complainant.
 27. Based on the ten-year average, the Respondent made the choice to round the current vacancy result to 3% rather than rounding up to 4%. The Respondent explained that it has always assessed vacancy allowances using whole numbers.
 28. In support of equity, the Respondent included a report showing all sixteen 'Power Centre' properties within the municipality assessed with a 3% vacancy allowance.

Findings of the Board

29. The Board finds the spaces at 2610 50 Avenue and 2410 50 Avenue are occupied for the purposes of determining vacancy allowance for the July 1, 2018 valuation date. These spaces were identified by the Respondent as occupied rather than vacant as shown in the Complainant vacancy study. The result of these corrections finds very different conclusions for each of the Complainant's four studies.
30. After considering both party's reports and argument, the Board finds 3% as an acceptable value for vacancy allowance for the subject property and makes no change.

What capitalization rate is supported by evidence to calculate the market value as of July 1, 2018?

Position of the Complainant

31. The Complainant argued that the capitalization rate should be adjusted to 7.0% based on the comparable property sales and equity comparable properties it has provided in evidence.
32. The Complainant provided information from various sources to demonstrate what a typical 'Power Centre' definition is. The common theme included; large planned areas, plenty of parking, common roadways with multiple nationally recognized tenants
33. The Complainant was unable to find any recent sales in the municipality of 'Power Centres'; therefore, it included a report of three sales it purported to be comparable to the subject property from different municipalities.
34. The Complainant's first sale near the subject property in the neighbouring municipality of Red Deer County at 357 Liberty Avenue. It is comprised of a 40,000 square foot retail space used for a cinema located on 3.24 acres of land. A second title exchanged with the sale. The second title was undeveloped and was comprised of 2.19 acres of land. The sale at \$14,000,000 in May of 2018 did not contain a breakdown to establish a separate value for each parcel. The Complainant attempted to calculate a value for the retail portion by removing the assessed value of the vacant land from the sale price. The Complainant demonstrated other values for the vacant land by looking at five land sales in the immediate vicinity. The applied rental rate was adjusted by looking at lease rates of seven cinemas in Alberta. The Complainant calculated a capitalization rate conclusion of 6.90% to support its 7.0% requested capitalization rate.
35. The Complainant's second sale, located in the City of St Albert at 445 St Albert Trail, is comprised of a 52,600 square feet of mixed retail uses located on 5.51 acres of land. The sale is recorded at

\$15,800,000 in August 2017. The Complainant attempted to calculate a capitalization rate value by adjusting for a land lease and applying typical rental rates. The Complainant calculated a capitalization rate conclusion of 6.55%.

36. The final sale provided by the Complainant is also located in the City of St Albert at 760 St Albert Trail and is comprised of a 27,552 square feet of mixed retail uses located on 2.64 acres of land. The sale is recorded at \$9,500,000 in January 2018. The Complainant attempted to calculate a value using actual rental rates in place at the time of the sale. The Complainant calculated a capitalization rate conclusion of 7.51%.
37. The Complainant argued that the three sales demonstrate a 7.0% capitalization rate with its best evidence being the 'Power Centre' (cinema) in the neighbouring municipality.
38. An equity argument was raised by the Complainant with adjacent and similar properties, that have a retail strip mall designation, receiving 7.0%, 7.25% and 7.5% capitalization rates despite containing similar quality rental spaces and competing for the same tenants in the same vicinity.
39. An additional equity concern was raised by the Complainant with properties that have a 'Power Centre' stratification with different quality classifications receiving 6.75% and 7.0% despite the rental spaces being of similar quality and competing for the same tenants in the same vicinity.
40. During rebuttal the Complainant commented generally that none of the current sales utilized by the Respondent are assessed in the same manner as the subject property; using different rental rates, vacancy rates and are stratified as different retail types with varying qualities.
41. In addition, the Complainant argued and provided evidence in regard to each of the following sales reported by the Respondent in the formation of its capitalization rate:
 - I. Eastview Shopping Centre – February 2019; income to calculate the capitalization rate is not from the year of sale, sale occurred after the assessment was prepared and doesn't even meet the definition of *post facto*, which are sales that occur after the valuation date and prior to the condition date;
 - II. Golden West Plaza – November 2017; net leasable area incorrect, included approximately 2 acres of additional land that wasn't adjusted, has been re-stratified since sale without appropriate adjustments. The Complainant alleged the Respondent was 'Sale Chasing' in their assessment of this property;
 - III. Eastview Shopping Centre – October 2017; sale was part of an acquisition of all assets and liabilities of a company in exchange for shares in the acquiring company and was part of a portfolio of 44 properties exceeding \$700 million;
 - IV. Hillman Properties – June 2017; sale was a portfolio of three sales in two different retail trading areas and two of three properties involved do not meet the Respondent's size minimum for comparability;
 - V. Centre 77 – September 2016; an industrial building;
 - VI. Gaetz Avenue Crossing – September 2012; sale too old to be a reliable indicator of current market conditions, the reported NOI in 2018 is 9.42% less than the year of sale NOI, suggesting the market has changed. The Complainant offered historic information on oil prices to demonstrate a likely cause for the change in market and leasing activity; and

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- VII. The Brick – May 2011; sale too old to be a reliable indicator of current market conditions suggesting the market has changed. The Complainant offered historic information on oil prices to demonstrate a likely cause for the change in market and leasing activity.

Position of the Respondent

42. The Respondent questioned the Complainant on all three sales it had presented. The first sale was a cinema and not a 'Power Centre', was not adjusted based on its location outside of the municipality, used inappropriate adjustments for land, and adjusted inputs to unsubstantiated values. The second sale in St Albert was not adjusted based on its location outside of the municipality, and adjusted inputs to unsubstantiated values. And the third sale, also from St Albert, was not adjusted based on its location outside of the municipality and used actual inputs rather than typical values.
43. The Respondent argued that none of the sales used by the Complainant are useful for the subject property and by combining the three sales, they reached a conclusion using three different analyses.
44. The Respondent presented eight sales including a paired sale (not used to create assessment, rather to substantiate the original sale). The seven remaining sales within 36 months of the valuation date arrived at a mean of 6.20% and a median of 6.27%. The Respondent argued that due to limited data with minimal inventory within the municipality it used all the retail sales that were reported as being in excess of 15,000 square feet.
45. In a subsequent report, the Respondent provided two 'Power Centre' sales purported as the most recent transactions that occurred in September 2012 and May 2011. The Respondent argued that it exercised its right to review transactions beyond 3 years because there are few transactions similar to the subject property. Both the mean and median were 6.39%.
46. The Respondent provided two additional analysis concluding that the existing 6.5% rate is excessive, but generally supported. Stating; "a capitalization rate of 6.25% would appear to be better supported by the analysis (sic)".
47. In support of equity, the Respondent included a report showing all sixteen 'Power Centre' properties within the municipality assessed with a capitalization rate of 6.5% for quality 4 (like the subject property), 6.75% for quality 3 and 7.0% for quality 2 properties.

Findings of the Board

48. The Board finds the typical consumer makes no distinction between the Gasoline Alley area of Red Deer County and the south retail district of the City of Red Deer. If an adjustment is required due to location, the value difference would be minimal as the properties enjoy similar exposure to highway 2 and the same consumers shop at both locations.
49. The Board finds the following properties to be significantly problematic for the creation of a capitalization rate for the subject property and excluded them from its analysis:
- I. 445 St Albert Trail; too far removed from subject property with no analysis on an appropriate location adjustment and insufficient information to determine if the typical inputs used to calculate the capitalization rate are appropriate;

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- ii. 760 St Albert Trail; too far removed from subject property with no analysis on an appropriate location adjustment and the failure to use typical values to calculate the capitalization rate;
 - III. Eastview Shopping Centre – February 2019; not appropriate for the valuation date;
 - IV. Golden West Plaza; no appropriate adjustment demonstrated for the access land and use of assessment parameters not seen elsewhere in the municipality;
 - V. Eastview Shopping Centre – October 2017; an affidavit of value is not meaningful when the sale is questioned on so many characteristics; portfolio sale, asset and liability transfer, acquired by the issuance of new shares by the purchaser, and not an open market transaction;
 - VI. Hillman Properties; two of the three transfers failed to meet the Respondent's comparability criteria, and a portfolio sale with no adjustments to understand the value placed on each property; and
 - VII. Centre 77; an industrial building with no apparent comparability to the subject property.
50. The Board finds the properties below to be instructive for the creation of a capitalization rate for the subject property if adjusted appropriately for the change in the marketplace. The Board excluded them from its analysis:
- I. Gaetz Avenue Crossing; and
 - II. The Brick.
51. The Board accepted four property sales in the determination of a capitalization rate:
- I. 32nd Street Crossing – April 2017 at 6.31%;
 - II. Bibles for Missions – November 2016 at 6.55%;
 - III. Giant Tiger – September 2015 at 7.70%; and
 - IV. Galaxy Cinema – May 2018 at 6.90%.
52. The Board finds a median of 6.73% from the above four sales and utilized it for the determination of a capitalization rate for the subject property.
53. The Board did not find an inequity in the treatment of the subject property.

DECISION SUMMARY AND COMMENTARY

54. The complaint regarding vacancy allowance of the subject property is not accepted with the rate remaining at 3.0%;
55. The complaint regarding the capitalization rate of the subject property is accepted with the rate adjusted to 6.73%.
56. The result of the afore mentioned changes results in the overall assessment complaint being accepted for subject property. The assessment is changed to \$9,134,600.

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57. Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 17th day of September, 2019 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



J. DAWSON
Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX:

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
1. A.1	– Hearing Materials provided by Clerk (23 pages)
2. C.1	– Complainant Disclosure – Gaetz South Plaza (Sobeys) (203 pages)
3. C.2	– Complainant Disclosure – Power Centre Capitalization Rate (182 pages)
4. R.1	– Respondent Disclosure – Gaetz South Plaza (Sobeys) (90 pages)
5. R.2	– Respondent Disclosure 0262 1226 – Legal Argument (52 pages)
6. R.3	– Respondent Disclosure – Addendum (176 pages)
7. C.3	– Complainant Disclosure – Capitalization Rate Response a. (246 pages) b. (302 pages)
8. C.4	– Complainant Disclosure – Vacancy and Rental Rate Corrections (26 pages)
9. C.5	– Complainant Disclosure – Legal Argument (306 pages), (pages numbered 1 – 6 and 32 – 331 inclusive. The Board removed pages 7 – 31 through a preliminary decision)