

# Central Alberta

Regional Assessment Review Board

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Decision: **CARB 0262 660/2015**

Complaint ID 660

Roll No. 540120

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COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: July 14, 2015

PRESIDING OFFICER: P. Hagemann

BOARD MEMBER: R. Kerber

BOARD MEMBER: W. Farr

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BETWEEN:

WALMART CANADA INC.

Complainant

-and-

THE CITY OF RED DEER

Respondent

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

ROLL NUMBER: 540120

MUNICIPAL ADDRESS: 2010 - 50 Avenue

ASSESSMENT AMOUNT: \$ 27,212,300

The Composite Assessment Review Board heard the complaint on the 14<sup>th</sup> day of July 2015, in the Council Chambers at the City of Red Deer, in the Province of Alberta.

Appeared on behalf of the Complainant:

Kam Fong, Cushman & Wakefield Property Tax Services

Appeared on behalf of the Respondent:

Rob Kotchon, City of Red Deer Assessment Coordinator and Analyst

**DECISION:** The assessed value of the subject property is confirmed at \$27,212,300.

## **JURISDICTION**

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 456 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”], and City of Red Deer Bylaw No. 3474/2011, *Regional Assessment Review Board Bylaw*.

## **PROPERTY DESCRIPTION AND BACKGROUND**

- [2] The subject property is a free standing Walmart “Supercentre”, consisting of 157,631 square feet [“sf”] of improvements that were built in 2000, with an addition completed in 2011. It is located at 2010 – 50<sup>th</sup> Avenue in Southpointe Common, within the South Gaetz Power Centre District situated on 11.72 acres. This Supercentre includes a grocery section also houses a McDonald’s restaurant, photo lab, vision centre and a portrait studio.
- [3] The 2015 assessment of this property identifies it as non-residential land with improvements and a commercial shopping centre. The assessment uses the income approach, utilizing a net annual rental rate of \$11.50/sf and a capitalization rate of 6.5%, resulting in a total assessment of \$27,212,300.

## **PRELIMINARY MATTERS**

- [4] The Board Chair confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [5] Neither party raised any objection to the panel hearing the complaint.
- [6] The Board Chair asked the Complainant to clarify the issues before them. The Complainant confirmed that under section 4 of the Complaint Form (identifying matters that apply to the complaint), they had checked off items #1, 3, 4, 5, 6, 7, 8, 9, and 10. The Complainant further confirmed that, for this hearing, they would only be submitting argument on #3, the assessment amount, and their arguments would focus on fairness of market value and equity components only.
- [7] The Board confirmed the submissions of the parties and entered the following Exhibits into the record:
- A.1 – Hearing Materials including Complaint Form and Notice of Hearing
  - C.1 – Complainant’s evidence, 185 pages
  - C.2 – Board Order #0238/12/2014, 15 pages Costco Wholesale Canada Ltd and The Town of Okotoks (Note: submitted during summation)
  - R.1 – Respondent’s evidence, 134 pages

## **ISSUES**

- [8] Does the assessment of the subject property reflect fair market value when considering sales and assessments of similar properties?

## **POSITION OF THE PARTIES**

### **Position of the Complainant**

- [9] The Complainant argued that:
- a) The \$11.50/sf rental rate, which was applied to the subject's assessment, is unsupported by market rents for Big Box Retail stores and, to be equitable, should be no more than \$10.00/sf; and
  - b) The market value of the 'fee simple estate' should only be \$93.00/sf, and based on similar Big Box Retail stores, the assessment should be no more than \$140.00/sf.
- [10] The Complainant challenged the valuation of Big Box Retail stores by referring to an article from U.S. author, David Charles Lennhoff, CRE, MAI. The Complainant explained that this article was presented at a Canadian Property Tax Association conference in Toronto. The article reviewed the fundamentals of assessments, including value in use versus market value; leased fee interest versus fee simple interest; market rent versus contract rent; etc. The article notes that value in use is different from market value. Market value assumes highest and best use. The article concludes by suggesting, "the credibility of an assessment is compromised when value in use of the leased fee interest is substituted for market value of the fee interest."
- [11] The Complainant noted that the City assessed the Home Depot, also a Big Box Retail store and adjacent to the subject Walmart property, at \$10.50/sf (C.1 at 18-42). The City's assessment attributed the difference in assessment value to the superior finish and the grocery component within Walmart. The City's assessment of Walmart is a blended rate of \$10.50/sf for retail area and \$16.00/sf for grocery. The Complainant contended that because there are no physical barriers between the grocery and retail areas, there should be no difference in their assessment values.
- [12] The Complainant submitted documents pertaining to one comparable sale of a Walmart store in Medicine Hat, sold on April 28, 2015 (C.1, at 56-67). This property sold for \$7,500,000, representing a market value of \$93.12/sf. The Complainant argued that this sale provides evidence that the assessment of the subject property at \$172.63/sf is considerably higher than market value.
- [13] The Complainant noted that a specific use might not necessarily be the highest and best use; a tenant may pay more money for a property that meets its specific needs. The Complainant referred to a May 8, 2015 article indicating that Walmart had purchased 13 former Target locations in Canada for \$350 million and expects to invest a further \$185 million to renovate these stores (C.1, at 56).
- [14] To illustrate the difference in fee simple estate value versus value in use, the Complainant referred to various sales (C.1, at 60 to 76) including:
- a former Sobeys in Edmonton, assessed at \$247/sf, which sold October 20, 2014 for \$92.84/sf;
  - a former Canadian Tire store located in Leduc, assessed at \$183/sf, which sold June 17, 2011 for \$61.00/sf; and
  - a former Rona store in St. Albert, assessed at \$216/sf, which sold Nov 2, 2012 for \$174/sf.

[15] The Complainant argued that the \$11.50/sf lease rate, which the City applied to the assessment of the subject property, is not supported by lease rates of similar Big Box stores that are greater than 80,000 sf (referring to the table within C.1, at 78):

- Six comparables, including Walmart, Canadian Tire and Target stores in Calgary, had lease rates ranging from \$7.00/sf to \$14.50/sf, with an average rate of \$8.97/sf, and a median lease rate of \$7.74/sf.
- Six Walmart stores, located in cities throughout Alberta, had actual lease rates ranging from \$5.46/sf to \$12.84/sf, with an average of \$7.56/sf, and a median of lease rate of \$6.59/sf.

The Complainant concluded that this evidence supports a lease rate value of \$8.00/sf for the subject property.

[16] The Complainant further argued for a reduced rental rate for the subject property based on a page from a rental study completed by the City of Calgary, showing an assessment rate of \$9.00/sf for free standing Big Box Retail stores over 100,001 sf (C.1, at 116).

[17] The Complainant provided the Board with a summary chart of 35 equity comparables of Big Box stores, including Walmart, Costco, Lowes, and Superstore throughout the Province of Alberta (see C.1, at 118 for the table summary with supporting records on pages 119 to 151). These assessments ranged from \$84.15/sf to \$198.03/sf with an average of \$145.37/sf, and a median of \$139.35/sf. The Complainant argues that this evidence lends support to his position that an assessment of \$140.00/sf for the subject would be more equitable.

### **Questioning of the Complainant's Evidence**

[18] The Respondent challenged the Complainant's evidence by advising that the sale of the Walmart in Medicine Hat (C.1, at 59) and the Sobeys sale in Edmonton (C.1, at 69) would not have been available to any assessor on valuation date of July 1, 2014.

[19] The Respondent questioned the Complainant on the 2011 sale in Leduc, asking if he considered this a good market indicator, to which the Complainant responded that it is a good example of the argument between fee simple and value in use.

[20] The Respondent noted that the leases on page 78 are dated and relate to 20-year terms, and asked the Complainant if there were any adjustments made to these leases. The Complainant confirmed that he assigned equal weight to the leases and there were no adjustments made.

[21] When asked to give the source of the chart on page 116, the Complainant noted that this page was from a larger 220-page document from the City of Calgary.

[22] The Respondent asked the Complainant about the 35 equity comparables on page 118 and asked if any adjustments had been made to size, location, or age. The Complainant confirmed that he had assigned equal weight and there were no adjustments made.

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- [23] The Respondent noted that the assessment for comparable #3, located within Westbrook Mall, was assessed at a value of \$83 million and asked the Complainant how he arrived at the assessment of \$21,300,000. The Complainant explained that his calculation was determined by isolating the Walmart portion of the property, but admitted that his calculation formula was not included in evidence. The Complainant applied the same calculation to comparable #2 (where Walmart is not the owner and did not receive an assessment notice) as well as comparables #6, #7, #14, and #15. The Complainant assured the Board that his calculation of the pro-rated assessments for the isolated Walmart components is correct.
- [24] The Respondent advised that there is a mezzanine space included with the Walmart on McLeod Trail, and asked if there were any adjustments for this. The Complainant replied that there were no adjustments.
- [25] The Respondent noticed that on the equity comparables chart (C.1, at 118), several items list the income year as 2015, which is after the July 1, 2014 assessment valuation date. The Respondent submitted that this is inadmissible. The Complainant stated that he received the 2015 assessments as shown in the evidence, and he assumed they apply to the subject assessment year. The Respondent countered that assessments indicating 2015 as the "Income Year" are intended for the 2015 assessment year with taxes due in 2016.
- [26] The Respondent clarified that Costco is located in close proximity to the subject property; however, it is located within Red Deer County, a different municipality than the City of Red Deer. The Respondent also clarified that the assessment shown for Superstore (C.1, at 118), is not the actual assessment, but one calculated by the Complainant.
- [27] The Respondent referred to the Complainant's evidence about fairness and equity (C.1, at 174) which states that in accordance with *MGA s (3)(c)*, an Assessment Review Board must not alter any assessment that is fair and equitable, taking into consideration the assessments of similar property or businesses in the same municipality.

### **Position of the Respondent**

- [28] The Respondent requested the Board confirm the 2014 assessment of the Walmart Supercentre located at 2010 - 50 Avenue at a value of \$27,212,300, which is based on the income approach to valuation using a market rental rate of \$11.50 per square foot. The assessment in question did not change from the previous year's assessment.
- [29] The Respondent advised the Board that the City of Red Deer has five power centres, three of which are located at Southpointe Common. The Respondent referred to maps (R.1 at 5-7) showing the location of the subject property near Highway 2. The three power centres located at Southpointe Common include Walmart, Home Depot and The Brick.
- [30] The Respondent further advised the Board that assessors refer to stand alone Big Box stores within a power centre as "shadow" power centre stores. Southpointe Common is a prime retail location in Red Deer with a proposed Phase 3 expansion between Taylor Drive and Highway 2 (R.1, at 6 & 7).

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- [31] The Respondent explained that there are only three retail stores in Red Deer in excess of 100,000 sf: these include Walmart, Home Depot, and Superstore. Although they are similar commercial stores, Walmart has a grocery component and superior interior finish compared to Home Depot. Superstore is located downtown, is not within a power centre, and is older than Walmart. Assessors consider multiple factors when determining the lease rates for the three larger stores, including building age, condition, interior finish, grocery component, location, and access.
- [32] The Respondent further explained that their assessment analysis for retail stores between 20,000 and 100,000 sf within the City of Red Deer results in different rates as outlined in three assessment categories on the spreadsheet at page 13 of R.1:
- A Group                      \$16.25 - \$20.00 range – assessed at \$17.00/sf
  - Grocery Stores            \$15.50 - \$16.75 range – assessed at \$16.00/sf
  - B Group                      \$11.10 - \$15.17 range – assessed at \$13.00/sf
- [33] The Respondent explained that the purpose of the spreadsheet on page 13 of R.1 is to illustrate that smaller stores are assessed at a higher rate than larger stores. The large grocery stores, with actual rents ranging from \$15.50 - \$16.75/sf, are assessed at \$16.00/sf, and this lease rate was applied to the grocery component of the subject property as shown on page 19 of C.1. The Respondent provided this information to the Complainant as required by s 299 of the *MGA*.
- [34] The Respondent presented a rental rate analysis of Walmart stores within the Province of Alberta (R.1, at 14).
- The size of the comparable properties range from 104,843 sf to 194,159 sf; the size of the subject property is 157,631 sf.
  - The construction year of the comparable properties range from 1997 to 2011; the construction year of the subject property is 2001-2011 (with renovations done in 2011).
  - The assessed lease rates of the comparable properties range from \$10.50/sf to 12.00/sf (excluding Okotoks), with an average of \$11.72/sf; the subject property's lease rate is \$11.50/sf.
  - The assessments for the comparable properties range from \$138/sf to 185/sf; the subject property's assessment is \$173/sf.

The Respondent explained that Edmonton's policy is to assess all buildings built in 1994 and after at \$11.00/sf, and to assess those built 1995 and newer at \$12.00/sf. The Respondent submits that this rental rate and assessment analysis illustrates a fair and equitable treatment among similar Walmart stores in Alberta. These stores contain a grocery section and are commonly referred to as "Supercentres."

- [35] The Respondent submitted a calculation of the assessment of the subject property using the Cost approach. This calculation separates land and building costs, and results in a value of \$25,022,466. The Respondent submits that this calculation further supports their assessment of the subject property.
- [36] The Respondent explained that stores such as McDonalds and Walmart typically do not rent the building; rather, they rent a piece of land and pay for the building and operational costs. These arrangements are commonly referred to as "pad leases," which allows for lower lease fees. The Respondent submits that these are not reliable indicators of market value.

[37] Four Municipal Government Board ["MGB"] orders were included in the evidence by the Respondent (R-1, at 17-134):

- MGB 075/05 between Walmart [Wye Road] and Strathcona County;
- MGB 080/05 between Walmart and The City of St. Albert;
- MGB 100/09 between Walmart and The City of Edmonton; and
- MGB 020/10 between Walmart and The Town of Okotoks.

The Respondent submits that all four Board decisions upheld the assessed values and provide reasoning that supports the assessment of the subject property.

[38] In conclusion, the Respondent reminded the parties that the burden of proof rests with the Complainant. The Respondent submits that the assessment of the subject property is fair and equitable; therefore, the Respondent asked the Board to confirm the assessment at \$27,212,300.

### **Questioning of the Respondent's Evidence**

[39] The Complainant asked if the Respondent was aware of the Costco store in Red Deer and the application of a cost approach to that assessment. The Respondent replied that Costco is in Red Deer County and he is unaware of the approach or policy they have utilized in their assessment process.

[40] The Complainant questioned the Respondent as to whether there were any adjustments made to size or age on the comparables shown on page 14 of R.1. The Respondent stated that this evidence illustrates equitable assessment rates throughout the province for Walmart Supercenter stores, with no adjustments made.

[41] The Complainant asked the Respondent to define "Supercentre" to which he replied that it is a Walmart term and typically refers to stores over 100,000 sf which have a grocery component within the store.

[42] The Complainant requested clarification as to the criteria used to determine A and B Groups on page 13. The Respondent replied that it was based on the type of tenant and that various factors are taken into consideration to arrive at the categories of A group stores, grocery stores, and B group stores, as explained within pages 12 to 14 of R.1.

[43] The Complainant continued asking why there is a difference between Home Depot and Walmart, yet London Drugs and Rona are in the same category. The Respondent explained that assessments are not prepared for individual stores. In accordance with legislation, properties are assessed using mass appraisal. The market determines the lease rates and the assessments follow the income method of appraisal. Once the assessor determines the appropriate categories, the same rates apply to all tenants accordingly. This assures that assessments are fair and equitable.

## **SUMMARIES OF THE PARTIES**

### **Respondent's Summary**

[44] The Respondent concluded that the Complainant's evidence is inconsistent and weak and does not support a reduction in the assessed value. The Respondent's evidence on the other hand provided a look at the lease rates of comparable properties within the City of Red Deer and equitable assessments of Walmart stores within the Province of Alberta. The assessment of the subject property is fair and equitable and the Respondent requests the Board confirm the assessment.

### **Complainant's Summary**

[45] The Complainant presented the parties with Composite Assessment Review Board ["CARB"] decision #0238/2014, between Costco Wholesale Canada and The Town of Okotoks. The findings of the Board were that "there should not be a different market lease rate applied to those portions of the floor area where foodstuffs are for sale relative to those portions where dry goods are for sale." The Complainant concluded that the assessment of the grocery portion of Walmart should not be higher than the retail portion for the same reasons as outlined in the CARB decision.

[46] The Complainant stated that the only market evidence provided is in the Complainant's submission. Exhibit C.1 at page 78 provides market leases. The Complainant argued that these comparables support a reduction in the lease rate of the subject. The Complainant suggested a rate ranging from \$11.50/sf to \$8.00/sf. The Complainant submitted that the subject Walmart assessment should be \$8.00/sf.

[47] The Complainant contended that "fee simple" and "value in use" are not interchangeable, and that the City's assessment is not fair or equitable.

[48] The Complainant requested the Board reduce the assessment of the subject property to \$8.00/sf based on market evidence, or not more than \$10.00/sf based on equity.

## **BOARD FINDINGS and DECISION**

[49] The Board finds the Complainant's discussion of the article by Lennhoff referring to assessment principles of little value in supporting the requested reduction in the assessment of the subject property. In fact, the Board is confused as to what the requested assessment should be, based on evidence provided by the Complainant.

- The Complaint Form requested an assessed value of \$23,647,000.
- In the summary of the testimonial evidence, the Complainant suggested that based on market rents, a rent of \$10.00/sf would be fair.
- Based on the 'fee simple estate' for Big Box Retail stores, the Complainant argued that the assessment should be \$93.00/sf.
- Based on similar big box retail the Complainant submitted that the assessment would be more equitable if assessed at \$140.00/sf.



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- [50] The Board places little weight on the sale of the Walmart in Medicine Hat as it sold March 27, 2015, which is past July 1, 2014 valuation date for the subject property.
- [51] The Board reviewed the sales of the Sobeys, Canadian Tire, and Rona stores and finds that they are not comparable to the subject property. These sales are not for Walmart Superstores and are not located in the municipality of the subject. Furthermore, the sheets accompanying the sale documents have errors in size, age, and site areas. The Board places little weight on this evidence.
- [52] The Board examined the lease rates of the big box stores in Calgary and found as follows:
- three of the stores are older than the subject; the lease for the Target included an option to renew at the same rate as 2008;
  - most of these leases are older with a 20 year term and therefore, do not reflect typical market lease rates as of valuation date;
  - the other Walmart locations throughout Alberta also have older leases, which are not a reflection of typical market lease rates at valuation date.

This evidence was not sufficiently persuasive.

- [53] The Board finds that the document on page 116 listing two stores in excess of 100,000 sf is not sufficiently clear as to the type of store, location, and assessment year and therefore gives it little weight.
- [54] The Board reviewed the 35 equity comparables throughout Alberta and finds the following:
- no adjustments were made to location, size, and age;
  - comparables #2,#3,#6, #7, #14 and #15 were not the actual assessments, but reflect calculations made by the Complainant to isolate Walmart stores from other mall tenants. As the details of the calculation were not included in the evidence, the Board could not ascertain its accuracy.
  - The assessment of the Walmart on McLeod Trail includes mezzanine space which had not been adjusted and therefore is not comparable.
  - Several of the comparables list the income year as 2015 rather than 2014.

The Board notes that few of the comparables are located in the City of Red Deer. For these reasons, the Board is reluctant to place significant weight on this evidence.

- [55] The Board reviewed the CARB decision presented by the Complainant and does not agree that grocery space should be valued the same as retail space. This decision in itself is not convincing since not all the evidence is before this Board. The Board notes that decisions of other Composite Assessment Review Boards are not binding and does not find the reasoning in that decision to be persuasive.
- [56] The Board finds the Respondent's evidence more compelling. The Board accepts the Respondent's analysis of how assessment rates are calculated, as provided to the Complainant under s 299 of the *MGA*, to be reasonable. The calculation based on the cost approach further supports the assessment.

- [57] The Board reviewed the comparison of the three big box stores located in Red Deer in the Respondent's evidence and is satisfied that the lease rate of \$11.50/sf for the subject property is equitable.
- [58] The Board has regard for s 467(3)(c) of the MGA which states:
- "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."*
- [59] The Board is persuaded by the Respondent's rental rate analysis of Walmart stores within the Province of Alberta supporting the lease rate of the subject at \$11.50/sf and the assessment at \$173.00/sf.
- [60] The Board further accepts that the grocery component, within the Walmart store, is more valuable, and finds that it is reasonable to assess this area at a higher rate. The grocery component has fixtures that are more permanent, such as coolers, which cannot be moved easily to another location within the store.
- [61] The onus is on the Complainant to provide the Board with significant and compelling evidence to cast doubt on the accuracy of the assessment of the subject. Their evidence did not persuade the Board.
- [62] In summary, the Board is satisfied that the assessment of the subject is correct, fair, and equitable.

### **DECISION SUMMARY**

- [63] The Board confirms the assessment of the subject property at \$27,212,300.
- [64] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 6<sup>th</sup> day of August, 2015 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.



Petra Hagemann  
Presiding Officer

**This decision can be appealed to the Court of Queen's Bench on a question of law or jurisdiction. If you wish to appeal this decision, you must follow the procedure found in section 470 of the Municipal Government MGA, which requires an application for leave to appeal to be filed and served within 30 days of being notified of the decision. Additional information may also be found at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca).**

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**APPENDIX "A"**

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**APPENDIX "A" - Documents Presented at the Hearing and considered by the Board**

<u>EXHIBIT NO.</u>	<u>ITEM</u>
A.1	Hearing Materials including Complaint Form and Notice of Hearing
C.1	Complainant's evidence, 185 pages
C.2	Board Order #0238/12/2014, 15 pages Costco Wholesale Canada Ltd and The Town of Okotoks
R.1	Respondent's evidence, 134 pages

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<u>Decision No.</u>		<u>Roll No.</u>		
<u>Appeal Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB				