

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

APR 1 2005



L050971

IN THE SUPREME COURT OF BRITISH COLUMBIA
AND IN THE MATTER OF THE ASSESSMENT ACT
R.S.B.C. 1996, CHAPTER 20, SECTION 65
AND IN THE MATTER OF AN APPEAL TO THE
PROPERTY ASSESSMENT APPEAL BOARD
OF BRITISH COLUMBIA

BETWEEN:

WAL-MART CANADA INC

APPELLANT

AND:

ASSESSOR OF AREA #26 – PRINCE GEORGE
ASSESSOR OF AREA #27 – PEACE RIVER

RESPONDENTS

AND IN THE MATTER OF THE DECISION OF THE BOARD
DATED THE 9TH DAY OF MARCH, 2005 IN SUCH APPEAL

STATED CASE

THIS CASE STATED by the Board, pursuant to Section 65 of the *Assessment Act*, at the requirement of the Appellant, Wal-Mart Canada Inc., seeks the opinion of the Supreme Court on the questions of law set out below in respect of which the following are the material facts:

1. The appeals before the Board were from the decisions of the 2003 and 2004 Property Assessment Review Panel (Review Panel) with respect to property in Prince George, and from the 2004 Review Panel with respect to property in Dawson Creek, and Fort St. John. All three of the properties are operated by the Appellant, Wal-Mart Canada Inc. (Wal-Mart) as "big box" retail stores.
2. The issue before the Board was the determination of actual value for each property and whether the assessments were equitable.
3. There are two types of Wal-Mart stores in British Columbia: stores that Wal-Mart owns and operates, and stores that Wal-Mart leases as part of joint venture developments.

Prince George Store:

4. The Wal-Mart store in Prince George is a leased store. It is located at 6585 Southridge Avenue, in Prince George and has a gross building size of 133,020 square feet. It was constructed in 2002 as part of a joint venture with First Prince George Limited, and is part of a power centre development. A "power centre" typically consists of several free-standing and unconnected anchor stores and a minimum of small speciality tenants.
5. The Prince George Wal-Mart is one of three anchors in the still developing First Pro Power Centre, which is the first power centre in the Northern Interior. The other anchors are Home Depot and Canadian Tire, who have constructed their own big box stores on adjacent lots purchased from First Pro.
6. Because power centres are a relatively new concept in Interior BC, there are few comparable sales to indicate a capitalization rate. Moreover, because all comparable big box stores in Prince George, including Costco (1993), Canadian Tire (2003), Real Canadian Superstore (1995) and Home Depot (2003), have chosen to purchase land and build their own stores rather than leasing, comparable rental information is limited.
7. Unfortunately, special relationships between the parties taint much of the available market information. For example, Wal-Mart leases from First Prince George Developments Limited, which is a partnership of First Pro and Wal-Mart. Furthermore, the only BC sales of Wal-Mart anchored power centres involve related corporations (Galloway and First Pro).

Dawson Creek & Fort St. John Stores:

8. The store in Dawson Creek is owned and operated by Wal-Mart. It is located at 600 Highway 2, in Dawson Creek and has a gross building size of 86,256 square feet. It was constructed by Wal-Mart in 2003 and is a free standing store with no other retailers surrounding it.
9. The Fort St. John store is also owned and operated by Wal-Mart. It is located at 9007 98A Street, in the city of Fort St. John and has a gross building size of 84,935 square feet. It was constructed by Wal-Mart in 2002 and is a free standing store.
10. The Dawson Creek and Fort St. John stores are stand-alone big box stores. No sales or rents of big box stores in the size range of the Wal-Mart stores are available in those communities. Most owners of comparable (but smaller) big box stores built during the last ten years

have chosen to purchase land and build their own stores rather than leasing. In Dawson Creek, the comparable stores are Canadian Tire (2000), Extra Foods (2002) and Safeway (1999). In Fort St. John, the comparable stores are Extra Foods (1997) and Safeway (1999). The IGA (Sobeys) store in Fort St. John, built in 1997 with an area of 30,810 square feet, is the largest recently constructed store in the Peace River region that is leased.

Board's Findings:

11. The Board found the highest and best use of the properties as improved is the current use or as developing.
12. The Board relied on the income approach to determine the values for each property.
13. There was no dispute that the appropriate vacancy rate to be applied to the properties was 3% and the appropriate expense rate was 5%.
14. The actual rent for the Prince George store in the November 2002 lease is \$8.02 per square foot. The Board found the net economic rent for the Prince George Wal-Mart is \$8.02 per square foot and the net economic rent for the Dawson Creek and Fort St. John Wal-Marts is \$8.50 per square foot.
15. The Board found the capitalization rate for the properties to be 9.25%.
16. The parties agreed that the excess land values for the Prince George store were \$3,885,265 for excess land for the 2003 assessment and \$4,784,265 for the 2004 assessment. The Assessor agreed not to pursue excess land calculations for the Dawson Creek and Fort St. John stores.
17. The Board found the actual values for the properties for the relevant assessment rolls were:

Prince George, 2003

NOI \$983,349 @ 9.25% =	\$10,630,800	
Excess Land	<u>\$3,885,265</u>	
Total	\$14,516,065	Rounded to \$14,516,000

Prince George, 2004

NOI \$983,349 @ 9.25% =	\$10,630,800	
Excess Land	<u>\$4,784,265</u>	
Total	\$15,415,065	Rounded to \$15,415,000

Dawson Creek, 2004

NOI \$675,622 @ 9.25% = \$7,304,021 Rounded to \$7,304,000

Fort St. John, 2004

NOI \$665,275 @ 9.25% = \$7,192,162 Rounded to \$7,192,000

18. Attached as Schedule "A" to this Stated Case is a copy of the Board's decision dated March 9, 2005. Attached as Schedule "B" is a copy of the Board's Hearing Results Form/Exhibit Sheet. Filed with this Stated Case are Exhibits 1 through 50 filed with the Board.

THE QUESTIONS which the Board is required to ask for the opinion of the Supreme Court are:

1. Whether the Board breached the principles of natural justice, thus acting unfairly, by applying to the valuation of the three properties under appeal a capitalization rate that was much lower than proposed by either party to the appeal without any prior notice to the parties of its intent so to do, thus depriving the Appellant of the opportunity of presenting evidence and argument in that regard.
2. Whether the Board erred by not considering whether use of the capitalization rate of 9.25% in valuation of the three properties under appeal resulted in an assessment of value that bore a fair and just relationship to the value of similar properties in the respective assessment areas.

DATED AT RICHMOND, B.C., this 20th day of April, 2005.



Cheryl Vickers, Chair
Property Assessment Appeal Board