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**T Update Week 2000-26**  
**Commercial and Industrial Properties**

**Indexed as:**

**956576 Ontario Inc. v. Ontario Property Assessment Corp.,  
Region No. 19**

**IN THE MATTER OF Section 40 of the Assessment Act, R.S.O.  
1990, c. A.31, as amended, and  
IN THE MATTER OF complaints with respect to taxation years  
1998 and 1999 on premises known municipally as 96 Main St. E**

**Between**

**956576 Ontario Inc., Highriver Investments, Assessed Persons,  
and  
The Ontario Property Assessment Corporation, Region No. 19 and  
the City of Hamilton, Respondents**

[\[2000\] O.A.R.B.D. No. 609](#)

File No. 1369

Hearing No. 12222

Complaint Nos. 91023 and 98401

**Ontario Assessment Review Board  
C. Cupido, Member**

June 21, 2000

(13 paras.)

**Appearances:**

S. Pocrnic, for the Assessed Persons/Complainants.

S. Alberton, T. Bock, for the Ontario Property Assessment Corporation.

No one appeared for the Municipality.

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**DECISION**

¶ 1 These complaints came before the Assessment Review Board on November 15, 1999 in the City of Hamilton.

**ISSUES**

¶ 2

- \* Does the September 8th, 1999 sale of the subject property for \$910,000 reflect the 1996 current value?
- \* Should fair market rents apply, or should actual rents be used?

### DECISION

¶ 3 The assessment is reduced from \$1,570,000 to \$1,098,000 for the 1998 and 1999 taxation years.

### REASONS FOR DECISION

¶ 4 The subject property is a neighbourhood mall located at 96 Main Street East, Hamilton. It is a one-storey structure, built in 1986, with a total area of 11,364 square feet. The lot size is 131 x 159.58 feet, or .48 acres. There are 22 parking spaces. The property is zoned Commercial 1, and it has a current value assessment of \$1,570,000.

¶ 5 There was a sale on the subject property for \$910,000, on September 8, 1999, and when the Board considers the supporting evidence, that the property was exposed prior to the sale for several months on the open real estate market at a list price of \$1,450,000, the Board is satisfied that the property was sold by a well informed vendor to an experienced purchaser.

¶ 6 The Board's findings are that market trends have changed very little from 1996 to 1999, suggesting any value discrepancy should be minor, at best.

¶ 7 The Assessment Review Board has always held that rolls are not frozen forever, and if events occur that may alter values, creating inequities, it is open for the Board to correct the assessment.

¶ 8 In 1999 there was also an appraisal done on the property valuing it at \$950,000, Exhibit 4. The appraisal was prepared by D. A. McKerlie & Company Inc., a respected appraisal firm in the City of Hamilton. The appraisal was for the purpose of obtaining a mortgage.

¶ 9 Evidence produced by the Ontario Property Assessment Corporation (OPAC) indicates that the current value assessment (CVA) was arrived at by using 1996 rents. The income approach derives its value by estimating the present market rents and income stream and in doing so, the re-negotiated rents are utilized. This is consistent with the encumbered directive of the Assessment Act (Act). However, given the sales history and ownership charges, there may be unfairness and disparity with this approach.

¶ 10 The assessor advised the Board that subsection 19(2) of the Act states value should be based on 1996 sales values as of June 30, 1996, suggesting the CVA is based on income and expenses as of 1996. However, the Board believes leases for the property from 1996 to the present, are in complete disarray, indicating very high rents to very low. As shown in Exhibit 2; there are examples of tenants breaking their leases of high rents, and in some instances, returning to much lower, re-negotiated rents. The assessor asked the Board to consider a sale of \$1,550,000 in 1993 of the subject, suggesting this is a better indication of value than the sale of \$910,000 in 1999. The Board finds this sale is not relevant, given 1996 is the base year, and the issue before the Board concerns rents, management and market conditions from 1996 to 1998.

¶ 11 In conclusion, the Board is satisfied the subject property appears to have a history of negativity, whether by economic conditions or poor management, as suggested in the sale of \$1,550,000 in 1993 and subsequent sale of \$910,000 in 1999, together with the evidence which shows very high rents to extremely

low, and in some instances, the lessee is one and the same. With respect to the sales and appraisal, the Board cannot agree they help establish CVA since the sales are out of the time frame and the appraisal was done for financial reasons to obtain a mortgage. Therefore, the Board must take into consideration what are fair market rents for 1996.

¶ 12 After attempting to find a true square foot rent ratio, the Board concludes, after a careful examination of all the rent rolls offered in evidence, it should be \$10 per square foot. Accordingly, when the following rate is applied:

Using \$10 per square foot

$\$10 \times 9.669 \text{ ratio} = \$96.69 \text{ value per square foot}$

$\$96.69 \times 11,364 \text{ square foot} = \$1,098,785, \text{ rounded to } \$1,098,000.$

¶ 13 The assessment is reduced from \$1,570,000 to \$1,098,000 for the 1998 and 1999 taxation years.

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