

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between

***Westhills Equities Inc.*
(represented by Altus) COMPLAINANT
Cineplex Odeon
(represented by Cobank Property Services) COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before

***L. Yakimchuk, PRESIDING OFFICER
A. Blake, MEMBER
J. Pratt, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	085068005
LOCATION ADDRESS:	165 Stewart Gr. SW
HEARING NUMBER:	64653 and 60780
ASSESSMENT:	\$15,370,000

This complaint was heard on October 17 and November 1, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 - 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *D. Hamilton, Altus Group*
- *J. Cohen, Cobank Property Services*

Appeared on behalf of the Respondent:

- *J. Young, City of Calgary Assessment*

Jurisdictional and Procedural Matters:

There were two complainants on tax roll 085068005. The complainants asked to be heard together, with the agreement of the City of Calgary, as the City response was identical for both files. The City did not contest the right of the tenant to appeal the assessment.

The Board agreed to hear both arguments together.

Property Description:

West Hills Towne Centre, located at 165 Stewart Green SW, is a CM1403 Retail Power Centre property on Signal Hill. It is assessed as one 51,903 square foot A2 building on 151,486 square feet (3.48 acres) of land. The building currently houses a Cineplex theatre.

Issues:

1. Mr. J. Cohen, on behalf of Cineplex, argued that the rent rate and vacancy rate were incorrect.
2. Mr. D. Hamilton, on behalf of Westhills Equities Inc., argued that the capitalization (CAP) rate was too low.

Complainants' Requested Value:

1. \$11,413,000
2. \$10,670,000

Board's Reasons for Decisions in Respect of Each Matter or Issue:

1. Mr. J. Cohen, on behalf of Cineplex, stated that the rent rate was too high. First, the actual current rent rate includes a tenant incentive for improving the property (C1a – Tab 7). As well, the property has been underperforming, although that is improving with the improvements paid for with the tenant incentive. An accurate rental rate would be \$18 per square foot rather than the typical rate of \$22 assessed by the City, based on comparable Power Centres. The Complainant went on to explain that vacancy rates are closer to 7% than the typical 1%, based on the longevity of a theatre and the time required to renovate it or find a new tenant at the end of its lifespan (C1b – Tabs 10-12).
2. Mr. D. Hamilton, on behalf of the property owner, argued that the CAP rate used by the City of Calgary was too low. He presented an argument based on the poor quality of the

City comparable sales, including grouping several individual sales as one purchase, using dated sales, and inconsistent income numbers from year to year for the same property. Mr. Hamilton asked that the CAP rate be increased to 7.75% from the current typical 7.25% used by the city.

Mr. J. Young, on behalf of the Respondent, stated that

1. The City assesses fee-simple value, not the value of the performance of the business. He explained that the value was derived from a study of power centres throughout the city. He also included the ARFI for the subject property, which shows that the property is currently rented at \$22.50 per square foot (R-1 p.17).
2. The vacancy rate is based on data summarized on R-1 p.21, which shows that Power Centre vacancy rates are typically 1%, including Westhills/Signal Hill.
3. The CAP rate used by the City is the typical rate for Power Centres. It has been calculated using sales, and rental information collected by the City (R-2.1 p.23, p.243). The rate of 7.25% is supported by this data.
4. The sales in the Power Centre Capitalization Rate Summary (R-2.1 p.23) were registered within the assessment period. Where they are post facto, they are used to confirm a trend rather than as part of the calculation. Sales of neighbouring properties to one buyer on the same date or registered within one day of each other were considered to be one sale. Numbers varied from 2010 to 2011 for one sale because the measurements had been corrected.

The Board reviewed the information and found that

1. The City is obliged to assess fee-simple value through mass assessments, by regulation. Therefore, typical rates are correct unless a property is proven to be atypical. Given the ARFI for the subject property, typical rental rates for power centres are a fair rate for this property.
2. Mr. Cohen's vacancy rate analysis was well constructed, but did not address vacancy rate as measured by the City.
3. The CAP rate analysis uses a small number of sales and the accompanying rental information. The City calculation is as accurate as possible within those limitations. Mr. Hamilton, on behalf of the Complainant, did not provide strong evidence to contradict the rate, and although he questioned the validity of some of the comparable properties, the Board finds them to be reasonably comparable and accurately reported.

Board's Decision:

Assessment is confirmed at \$15,370,000.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF November 2011.



Lana Yakimchuk
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
File 60780:	
1. C1a, b	Complainant Disclosure
2. R1	Respondent Disclosure
File 64653	
3. C1.1a, b	Complainant Disclosure
4. C2.1a, b	Rebuttal
5. R2.1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

This information is for MGB Records Only

File Number	Roll Number	Subject Type	Issue	Detail	Sub-Detail
2524	085068005	CARB	Market Value	Rent, Vacancy, CAP	
2523	085068005	CARB	Market Value	Rent, Vacancy, CAP	