

**CALGARY  
COMPOSITE 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., as represented by Altus Group Limited, COMPLAINANT***

**And**

***The City Of Calgary, RESPONDENT***

**Before:**

***S. Barry, PRESIDING OFFICER***

***B. Jerchel, MEMBER***

***J. Kerrison, MEMBER***

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

<b>ROLL NUMBER:</b>	<b>085051407</b>
<b>LOCATION ADDRESS:</b>	<b>5551 Richmond Rd S.W. Calgary, AB</b>
<b>HEARING NUMBER:</b>	<b>64329</b>
<b>ASSESSMENT:</b>	<b>\$13,020,000</b>

This complaint was heard on the 31st day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *D. Hamilton, Altus Group Limited*

Appeared on behalf of the Respondent:

- *K. Gardiner, City of Calgary*

### **Board's Decision in Respect of Procedural or Jurisdictional Matters:**

The Parties advised that the arguments made by both the Complainant and the Respondent with respect to the capitalization rate (cap rate) would apply to all of the Complaints to be heard in Boardroom 3, during the week commencing October 31, 2011. Both Parties requested that all of the cap rate evidence, argument, questions, answers and summaries be carried forward to all of the files. The Board agreed. At each of the seven hearings subsequent to the subject, the Parties again agreed that the cap rate arguments could be carried forward despite there being different representatives of the Complainant's Agent and the Respondent at some of those hearings. Accordingly, the written and oral testimony with respect to the Altus Power Centre Retail 2011 Capitalization Rate Analysis & Argument (Altus Study) and the Respondent's 2011 Power Centre Capitalization Rate Summary (City Study) will apply to the following Complaints:

<b><u>Roll No.</u></b>	<b><u>File No.</u></b>	<b><u>Address</u></b>	<b><u>CARB Decision</u></b>
085051407	64329	5551 Richmond Rd S.W.	2791/2011-P
085501506	64326	5551R Richmond Rd. S.W.	2793/2011-P
085051605	64303	5751R Richmond Rd S.W.	2792/2011-P
085051704	64647	5751 Richmond Rd. S.W.	2794/2011-P
085067908	64650	121 Stewart Gr S.W.	2795/2011-P
085128205	64656	5986 Signal Hill CE S.W.	2796/2011-P
085128908	64662	5661 Signal Hill CE S.W.	2797/2011-P
085128403	64659	5858 Signal Hill CE S.W.	2841/2011-P

### **Property Description:**

The property under complaint is a 5.77 acre parcel located in the West Hills Towne Centre near the corner of Sarcee Tr S.W. and Richmond Rd S.W. It is a commercial property, located within a power shopping centre, and has a number of improvements on it constructed on or around 1993; specifically: fast food restaurants Kentucky Fried Chicken, McDonalds and Taco Bell; a former Blockbusters; and two restaurant/dining lounges – Earl's and Moxie's. The latter two have an assessed area of 12,880 square feet (sq.ft.). The property is assessed using the income approach to value using the following typical parameters: rental rate Blockbusters - \$29 per sq.ft.; rental rate fast food restaurants - \$42 per sq.ft.; rental rate restaurant/dining lounge - \$35 per sq.ft. The vacancy rate is 1.25%; the operating costs are \$9.00 per sq.ft., the non-recoverable expenses are 1%. For the assessment, the cap rate is 7.25%.

**Issues:**

A number of issues were raised on the Complaint Form that were collapsed in the Disclosure document C1 and later further refined at the hearing. At the hearing, the Complainant accepted the rental rates for Blockbuster and the fast food restaurants, as assessed. The previous issue with respect to the Blockbuster site's rental rate was withdrawn at the outset of the hearing. The Complainant also accepted the vacancy rate, operating costs and allowance for non-recoverable expenses. There are two issues still before the Board.

1. Does the assessed rental rate of \$35 per sq.ft. for the restaurant/dining lounge property correctly reflect typical rents for these types of establishments?
2. Does the application of a 7.25% cap rate for power centres produce the best indicator of market value for the property under complaint?

**Complainant's Requested Value:** The assessment requested on the Complaint Form was \$7,840,000. This request was revised in the Complainant's Disclosure document to \$11,610,000 and was revised again to \$11,690,000 based on a rental rate of \$32 per sq.ft. for the restaurant/dining lounge and a cap rate of 7.75% and on the withdrawal of the Blockbuster's rate issue as noted above.

**Board's Decision in Respect of Each Matter or Issue:**

1. Restaurant/dining lounge rental rate: In support of his argument that the two restaurant/dining lounges should be assessed at \$32, the Complainant introduced a document prepared by the Respondent entitled "Westhills/Signal Hill Restaurant Lease Comparables" that appeared to be part of a submission made by the Respondent with respect to a different Complaint heard earlier in 2011. Located on p.39 of C1, that table shows rates ranging from \$27.50 to \$35 per square foot on somewhat dated leases with start dates as early as 1993 and as recent as 2009. The median rate is listed at \$33.85 and the average calculates to \$32.07. The Complainant noted that one of the leases, a property located across the street from the subject, at 5989 Signal Hill, dated in 1999, is actually a relatively current lease renewed in May of 2009 for the listed rate of \$29 per sq.ft., increased from \$26.50.

The Complainant did not provide a rent roll for the subject property. The Respondent, however, did include rents for the subject obtained through the Assessment Request for Information (ARFI) dated April 2010. The ARFI indicates that the rents on the two properties under complaint are \$27.50 and \$33.85, averaging \$30.67 per sq.ft. These leases are somewhat dated as well but at least one shows a step up rent since the 2004 start date.

On balance, and having regard for the two most current leases of \$29 and \$35 per sq.ft., the Board finds that the rent rates being achieved in the area specific to the property under complaint are more consistent with a rate of \$32 per sq.ft. than \$35 per sq.ft. and therefore allows this portion of the Complaint.

2. Capitalization Rate: In developing the Altus Study, the Complainant relied on three sales from power centres located in north-west Calgary: 800 Crowfoot Cres. in Crowfoot Square; 20 & 60 Crowfoot Cres. in Crowfoot Village; and 140 Crowfoot Cres. in Crowfoot Corner. The sales information was supported by Alberta Data Search reports and the rents are supported either through actual rent rolls or through ARFI responses. The Complainant's income analysis used actual net rents that would have been in place at the time of sale. Vacant space was treated as if leased up at market rents. Time of sale typical values for vacancy, vacant space shortfall and non-recoverable expenses were applied to calculate the net operating income (NOI). The resulting NOI were divided by the unadjusted sales prices to achieve a cap rate for each property, the median of which was 7.75% and the mean or average of which was 7.8%. The Board accepts the methodology for preparing the Study as being consistent with the Respondent's process as laid out on pages 72 through 75 of C1: actual rents are applied to the appropriate leased areas with vacant space leased up at rates to be found within the total leased area. Typical vacancies and other allowances are applied to achieve the NOI which is then divided by the sales price. The median capitalization rate is then to be applied to the population "in a consistent manner".

The Respondent raised issues with some of the Complainant's comparables, as did the Complainant with some of the Respondent's comparables in its City Study which is summarized on p.20 of R1. The Board heard and noted the arguments on leased fee versus fee simple estates, whether properties should be treated as one or multiple sales and so on. However, those issues were not germane to the Board's decision and their validity, or otherwise, do not speak to the heart of the Board's decision; they will not be resolved here.

One of the deciding issues, in the Board's opinion, is the applicability of the Altus Study using sales solely from north-west power centres to demonstrate a cap rate for a south-west power centre. It is recognized that the Respondent also used north-west properties in the City Study in responding to the Complaint. However, the responsibility is still on the Complainant to demonstrate the applicability of his requested rate to the area under complaint. In responding to questions from the Board, the Complainant did not attempt to demonstrate the similarity of these specific shopping centre areas. His justification for using the north-west area was that there were no sales in the south-west. That may be but it doesn't mean that there aren't other methods of establishing the relevance of using one area of the City to support a cap rate in another.

The primary issue for the Board is the way the results of the Study are applied to the subject area. The Respondent raised, among other precedents, *Westcoast Transmission v. Assessor for Area 9 (Vancouver)* 1987 BCSC 235. The Board's interpretation of that decision is, simply, whatever methodology is used to derive a cap rate, that same methodology must be used in determining the value of the subject property for assessment purposes. Having used actual rents and typical values for the other inputs to create the requested cap rate in the Study, the Complainant must then apply the derived cap rate to the same value types for the subject. In this case the Complainant used typical rents, instead of actual rents, to create an assessed value. The approach used by the Complainant is inconsistent with the *Westcoast* test and therefore fails.

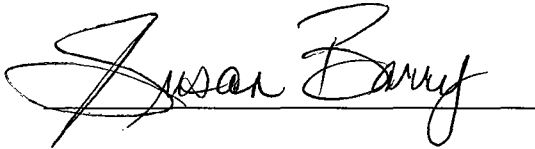
In summary, the Complainant failed to demonstrate that the requested cap rate is applicable to the subject area or that he has correctly applied the methodology that underpins that requested rate.

The Board accepts the Complainant's request for an adjustment in the rent rate for the restaurant/dining lounge area and rejects the requested cap rate. The assessment is revised to adjust the potential net income for the lower rent of \$32 per sq.ft. and the resulting calculations to achieve the NOI are similarly adjusted. The final NOI of \$906,450 is divided by a 7.25% cap rate to achieve an assessment of \$12,500,000 truncated.

**Board's Decision:**

The 2011 assessment is revised to \$12,500,000.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF November 2011.



S. Barry, Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal, Part 1
4. C3	Complainant's Rebuttal, Part 2

*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.*