



Calgary Assessment Review Board

REVISED 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:

**CINEPLEX ENTERTAINMENT LP,
(as represented by COBANK PROPERTY TAX SERVICES INC.)
COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**R. Glenn, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
P. Pask, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER: 085068005
LOCATION ADDRESS: 165 Stewart GR SW
FILE NUMBER: 72055
ASSESSMENT: \$16,210,000

This complaint was heard on Tuesday, the 2nd day of October, 2013 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 10.

Appeared on behalf of the Complainant:

- J. Cohen, Agent

Appeared on behalf of the Respondent:

- J. Lepine, and S. Turner, Assessors

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

[1] When asked, neither party raised any issues with regard to either Jurisdiction or, Procedure.

Property Description:

[2] The subject is a 51,903 square foot tenancy within the subject property (a Power Centre located in SW Calgary) that was special purpose built in 1996, and renovated in 2009, for the exhibition of movies, known as the Westhills Cineplex Theatre. The subject is located just west of the intersection of Richmond Road and Sarcee Trail SW. It was assessed at \$20/SF.

Issues:

[3] The parties agree that the sole issue for determination is the appropriate rental rate for the subject theatre premises.

Complainant's Request:

[4] \$14,584,000

Board's Decision:

[5] \$13,500,000

Complainant's Position:

[6] The Complainants suggested an \$18/SF rental rate based on the recent leases from the subject theatre and from the Silver City Cross Iron Mills theatre and other comparable theatres. They suggest that the subject is not performing well, but that is not the reason for their

complaint. With a view to changing and broadening public tastes and demands in entertainment, the Complainant sought to update and upgrade the theatre facility to meet its perception of those changes. Despite all the changes, the subject was still not performing well

[7] Under the terms of their original twenty year lease for Westhills Cineplex, Minimum Rent for years 1 to 10, (i.e., August 1, 1996 to July 31, 2006) was \$14.50/SF, and for years 11 to 20 (i.e., August 1, 2006 to July 31, 2016) was \$16.00/SF.

[8] However, in conjunction with the re-development of the Shopping Centre, Cineplex and the Landlord entered into a new lease agreement for a fifteen year term commencing December 20, 2009 and ending December 31, 2024, on the understanding that Cineplex would renovate the theatre to include:

- (a) a conversion to stadium seating;
- (b) an upgrade of the lobby, ticketing, and concession areas;
- (c) washroom upgrades;
- (d) Building and exterior upgrades.

[9] As an inducement to undertake this renovation, the Landlord agreed to pay Cineplex a Tenant Allowance of \$50/SF, or, \$2,595,000 upon substantial completion of these upgrades. In return for this Tenant Allowance, Cineplex agreed to increase its annual Minimum Rent to \$22.50/SF for years 1 to 5 of the Term, \$24.50/SF for years 6 to 10 of the Term, and \$26.00/SF for years 10 to 15 of the Term.

[10] The Complainant went on to present revenue figures for the subject and some comparables (noting that all of the theatres were showing the same picture at the same time, yet attendance at the subject was still 30% below the comparables) and as well, details of some other theatre chains which were no longer in business. Of course, revenue from the subject was not relevant to the matters in issue.

[11] The Complainant went on to argue that no Canadian theatre (except the subject) had a lease rate higher than \$20/SF, and presented a number of comparables to support that contention. The majority of the comparables both in the City and across Canada supported the Complainant's assertion that the rental rate should be less than \$20/SF.

Respondent's Position:

[12] The Respondents argued that the Complainant should look to Commercial Retail Unit (CRU) space for proper comparables. Further, they say that of the Complainant's 23 comparable leases, 6 were post facto, 3 had yet to commence, and ultimately, only one was from Calgary, and that one lease had the highest rate at \$22.50/SF.

[13] The Respondents note that the Complainants rely heavily on the comparable lease from the Silver City Cross Iron Mills theatre (located just north of the city limits) with a 2010 rental rate of \$17/SF. They said that this comparable was not within the Municipality of Calgary and

used that fact as a springboard for most of the rest of their argument, arguing against the comparability of the Cross Iron Mills property for a number of related reasons.

[14] The Respondent argued against the Complainant's "Past Theatre Trends versus Current Theatre Trends" position, indicating that 2012 was the highest grossing year of all time for theatrical films. They say the business of theatrical exhibition is an extremely consistent market with no signs of slowing down, although no evidence was submitted in support of that allegation.

[15] Where the Complainant argued that there is a loss of admissions and concession revenues as a result of newer trends in the theatrical market, the Respondent believed that they had shown that this was not accurate. The Respondent further assert that the profitability of a theatre is not what is in issue here.

[16] The Board notes that a previous decision (**LARB#1014-2012-B**) confirms that Board could not ignore the Cross Iron Lease, even though it was slightly outside the city limits, because it was the most recent lease and therefore it was most reflective of the new dynamics of the theatre marketplace. The City argued strongly that it could not go outside its jurisdiction and therefore the Cross Iron Mills theatre should be excluded as a comparable.

[17] The Respondent went on to argue that improving the subject premises would impact all of the surrounding properties. The Respondent argued in cross-examination that not every MacDonald's Restaurant in the city is assessed at the same rate, so, by comparison, why should all theatres be assessed at the same rate.

Board's Decision:

[18] The Board was asked to apply its decision regarding the Cap Rate from **CARB #72486-2013-P** to this decision to come up with a comprehensive decision. The Board agreed to do so.

[19] The Respondent provided little or nothing by way of current comparables in this matter. Out of the five comparables they presented, three had a commencement date of 2002 or earlier. Their comparables were simply not current enough. In addition, they sought to use CRU rental figures, but these were of little assistance to the Board. They also presented the subject lease as a comparable without any of the relevant background information (especially regarding the renovations).

[20] Their strongest argument seemed to be that the Complainant's comparables were not really comparable and they did their best to completely dismiss them. They further argued that all of the Complainant's argument regarding past and present theatre trends was completely irrelevant. Essentially, the Complainant's information on both comparables and trends was quite helpful to the Board in order to understand the basis for the current rental rate of the subject renovated premises.

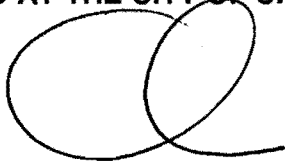
[21] With respect, the Board disagreed with the Respondent's position almost completely. The Board agrees that there were not many local comparables to provide a baseline of information, however, the comparable information provided by the Respondent was scant at best.

[22] The Complainant presented a much broader base of evidence to the Board, most of

which was on point and accepted by the Board. However, the Cap Rate was changed from 6.25% to 6.75% as the Complainant seemed to have fewer errors in their Cap Rate calculations.

[23] Based on all the foregoing, the rental rate is herewith reduced to the requested \$18/SF, which would normally render a value of \$14,584,000. However, the increased Cap Rate as noted would further reduce the value to \$13,500,000. Accordingly, the subject assessment is herewith reduced to \$13,500,000.

DATED AT THE CITY OF CALGARY THIS 5th DAY OF DECEMBER, 2013.



R. Glenn
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Additional Complainant Disclosure
3. C3	Additional Complainant Disclosure
2. R1	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.*