



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:

***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: 201386513
LOCATION ADDRESS: 6455 MACLEOD TR SW
FILE NUMBER: 72059
ASSESSMENT: \$1,027,440,000 (Whole Shopping Centre)

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. However, the parties jointly requested that the argument, evidence, applicable principles and ultimately the decision from **CARB 72055-2013-P** should be applied to this hearing. The question in **CARB 72055-2013-P** was whether the appropriate applicable rental rate was the current contract rent, or whether it should be determined by the use of comparables. The Board agreed to apply **CARB 72055-2013-P** once it was decided.

Property Description:

[2] The subject is a 90,000 square foot movie theatre within the subject property (a Regional Shopping Centre known as Chinook Centre located in SW Calgary) which was originally built in 1958, and opened in its present form in 2001, now known as the Scotiabank Theatre Chinook. The current lease was signed in 2001 for a period of 20 years. The subject is located in the south end of the subject shopping centre near the intersection of Macleod Trail S and Glenmore Trail SW.

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] \$39,781,000 (\$28/SF)

Board's Decision:

[5] \$45,484,000 (\$32/SF)

Complainant's Position:

[6] The Complainants argued that a \$28/SF rental rate, would be appropriate for the subject property. Essentially, they said that because there are so few comparables available for a property of this type and size, that the Income Approach to Value should be utilized to calculate current Market Value.

[7] The Complainant calculated the Income as follows:

Potential Gross Income: 90,000SF X \$28.00/SF = \$2,520,000

Effective Gross Income: \$2,520,000 – 1% vacancy (\$25,200) = \$2,494,000

Net Operating Income: \$2,494,000 – vacancy shortfall (\$8,100) – non-recoverables

(\$99,792) = \$2,386,908 – Cap Rate of 6% = \$39,781,800

Rounded to: \$39,781,000.

[8] The Complainant went on to argue and provide the details of such things as: Theatre Admissions, Theatre Revenues, and Attendance, to convince the Board that the actual business of this theatre was not doing as well as it might. They provided little that would justify their choice of a Market Rental Rate of \$28/SF.

[9] The Complainant closed their argument by stating that: "we should err on the side of a decline in attendance", once again arguing that the subject theatre was the best performing theatre in Calgary, but it still had a diminution of attendance.

Respondent's Position:

[10] The Respondents argued that the Complainant's requested reduction was ½ of 1% of the Mall value. They also confirmed that the proper approach to ascertaining value here was the Income Approach.

[11] They carried on arguing that the subject theatre was currently earning \$32/SF and that the subject was located in the most popular Regional Mall. They went on to extol the virtues of the subject Mall at length. They also provided evidence from ARFI information that the Mall properties were in fact generally earning \$32/SF.

[12] The Respondent clarified that the mall owner was not the one who appealed. Only the theatre had appealed. The mall owner had agreed with the original assessment. They went on to argue against the comparables which the Complainant had provided. They closed their argument by reiterating that the subject assessment was site specific.

Board's Decision:

[13] The Board's decision in **CARB 72055-2013-P** was that the contract rent in that matter was not determinative.

[14] In this matter, the Complainant tentatively argued the contract rent was determinative of what the rental rate should be. Ultimately, the Board's decision in **CARB 72055-2013-P** was that in these types of matters, the contract rent was not determinative.

[15] Based on the Complainant's argument, the Board notes that the contingent argument was not fulfilled (contract rent was not determinative), and so the Board accepts the Respondent's evidence that the proper rent figure to be used is \$32/SF .

[16] The Board finds that the proper rental rate figure for the subject is \$32/SF, or an assessment of \$45,484,000. Accordingly, the subject theatre assessment is confirmed in the amount of \$45,484,000, and therefore, the overall assessment for Chinook Mall is confirmed at: \$1,027,440,000.

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.*