



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.,
(as represented by ALTUS GROUP LTD.),
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 Green SW
FILE NUMBER: 72486
ASSESSMENT: \$16,210,000

This complaint was heard on Wednesday, the 3rd 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:

- B. Neeson, and K. Fong, Agents

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 and evidence from **CARB 73775-2013-P** should be carried forward and applied to this hearing. The Board agreed to do so because it was a mutual request.

Property Description:

[2] The subject is a 51,903 square foot property, (within a Power Centre known as Westhills Towne Centre, located in SW Calgary) which was special purpose built in 1996 as a movie theatre. The subject is located near the intersection of Richmond Road SW and Sarcee Trail SW in the district of Westhills.

Issues:

[3] The parties agreed on the record that the sole issue for determination in this matter is the appropriate Capitalization Rate (Cap Rate) for the subject theatre premises.

Complainant's Request:

[4] \$13,500,000 (Cap Rate of 6.75%)

Board's Decision:

[5] \$13,500,000 (Cap Rate of 6.75%)

Complainant's Position:

[6] The Complainants noted the current assessment Cap Rate in issue was 6.25%, whereas they sought a Cap Rate of 6.75% They suggested that the Respondents set the Cap Rate for all

Power Centres at 6.25% regardless of the year of construction, the quality of the premises, location of the property, and other relevant factors.

[7] The Complainants noted that these Power Centre properties do not trade all that often. They provided 3 comparable sales, claiming all of the sales were genuine. The parties could not however, agree on one sale, where the Complainant argued a \$40/SF Rental Rate and a Net Operating Income (NOI) of \$200,000, whereas the Respondent argued a Rental Rate of \$32/SF and an NOI of \$157,000. The parties agreed that there was a new lease in place regarding that property at \$38/SF.

[8] The Complainant went on to explain their understanding of what a Power Centre was: a large shopping centre with three or more anchor tenants (14,000SF or larger), typically consisting of 80,000SF or larger. There are seven Power Centres in Calgary. The Complainant did claim however, that one of the Power Centres (Signal Hill) was an outlier, and should not be seriously considered as a comparable.

[9] The Complainant suggested that there were two methods of calculating the Cap Rate, both of which when properly calculated would provide a Cap Rate of 6.75%.

[10] The first methodology was the application of the Assessed Income as prepared by the City of Calgary Assessment Business Unit (ABU).

[11] The second methodology was the application of Typical Market Income as prescribed by: *The Alberta Assessors Association Valuation Guide (AAVG)* and *Principles of Assessment 1 for Assessment Review Board Members and Municipal Government Board Members*.

[12] The Complainant confirmed that they relied on the second method in their calculation and as a basis for their reasoning. The Complainant noted that the current assessment was an increase of \$2,240,000 over last year's assessment.

[13] The Complainant's evidence showed that there is some substantiation for a Cap Rate of 6.75% for a particular Bank property in Crowfoot Crossing Centre, whereas, the Respondent asserts a Cap Rate of 6.35% based on its evidence.

[14] The Complainant provided a 2011 Power Centre Retail Bank Analysis consisting of 7 Bank properties located in Power Centres which demonstrated a Median Lease Rate of \$40/SF, though the average was only \$38.29/SF. The Complainant went on to present a 2013 Power Centre Capitalization Rate Analysis utilizing the second methodology from a closely adjacent Power Centre (Crowfoot Village) located at #20 & #60 Crowfoot Crescent NW which demonstrated a Median Cap Rate of 6.74%.

[15] The Complainant completed their argument by providing a 2013 Power Centre Rate Summary which supported a Median Cap Rate of 6.78% utilizing the first method. Then utilizing the same comparable's numbers, but the second method, with a resultant Cap Rate of 6.74%, with the comment that the Cap Rates derived are close, regardless of the method used to derive them.

Respondent's Position:

[16] The Respondents initiated their argument by confirming that for their calculations, they relied on Market Rents, not the actual, or, contract rents. Their reasoning was that in some cases, actual rents were derived from leases negotiated or entered into before the valuation date, and accordingly, actual rents were not relevant. They reiterated that generally, older leasing had lower rates.

[17] The Respondent carried on arguing that notwithstanding the Cap Rates used for the Power Centres in the City were all the same, each of the Power Centre properties were properly assessed individually. In the Respondent's brief, they suggested that the Complainant in at least one situation relied on one actual lease to establish Market Value.

[18] The Respondent utilized the Complainant's 2013 Power Centre Retail Capitalization Rate Analysis to try to show that the Complainant had attempted to change the typical rate in the year of the sale. They said this results in an inflation of the NOI. They further claimed that changing the typical rental rate resulted in an inflation of the Cap Rate.

[19] The Respondent provided a 2011 Cap Rate Summary which demonstrated an assessed Cap Rate of 7.25%, using "typical" information. They also provided a 2011 Historic Bank Lease Analysis produced for 2013 Assessment Complaints which demonstrated a contract lease rate of \$32/SF. In addition, the Respondent provided a commentary on the Complainant's 2013 Power Centre Retail Cap Rate Analysis (which used method two), and asserted that the input information used by the Complainant was erroneous, and therefore, the result of the analysis was incorrect.

[20] The Respondents went on to present information from a recent Altus Insite Investment Trends Survey which showed that the Cap Rate for the third quarter of 2012 should be in the range of 5.60% to 6.00%. The Respondents also presented their own 2013 Power Centre Cap Rate Summary which supported the assessed 6.25% rate.

Board's Decision:

[21] The Complainant's submission regarding the Respondent using the same Cap Rate for all of the Power centres in the City, convinced the Board that the current assessed Cap Rate for Power Centres should be very closely examined. It seems that the year of construction, the quality of the improvements on a property, and the location of a property should all be relevant factors in determining the Capitalization Rate, yet the Respondent did not address these matters in their argument, or in their evidence. These should have been directly addressed by the Respondent.

[22] The Complainant's argument and evidence did a better job of confirming that a Cap Rate of 6.75% (as opposed to 6.25%) was indicated in this matter. The Respondent attempted

to explain the differing Cap Rates on Bank properties in Crowfoot Crossing, but the Board was not convinced by the explanation they offered.

[23] The Complainant demonstrated through their evidence that using either of their suggested Cap Rate calculation methods rendered a similar result. The information they relied on for their calculations was from current leases. The Respondent relied on typical figures. The Board preferred the Complainant's approach.

[24] Each of the parties suggested the other party overlooked or excluded information which would have impacted their position in this hearing, but that admonition, ultimately was not helpful without more elaboration. None was provided.

[25] In some of the Lease Analysis information presented by the Respondent, it was not apparent whether they were relying on a 30 month time frame, or something longer (ie: 5 years).

[26] Based on all of the foregoing, the Board was convinced that the argument and evidence of the Complainant was more persuasive regarding a Capitalization Rate of 6.75%. Accordingly, the Board confirms the appropriate Capitalization Rate is 6.75%, which would render an appropriate assessment on the subject property to be: \$13,500,000. Therefore, 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
4. 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.*