

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Assessment Review Board (CARB) pursuant to the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the *Act*.)

BETWEEN:

MNP LLP Property Tax Services - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

I. Zacharopoulos, Presiding Officer

R. Nix, Panel Member

D. Onerheim, Panel Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of the Town of Okotoks as follows:

Roll Number	Address	Assessment
0029080	100 Woodgate Road	\$4,731,000

This complaint was heard on the 30th day of June 2020 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- MNP LLP Property Tax Services
 - R. Ferguson, Agent
 - R. Bloom, Agent

Appearing on behalf of the Respondent:

- Town of Okotoks
 - D. Genereux, Assessor

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Preliminary Matters

- [1] The parties stated they had no objections to the composition of the Board or with the Board's jurisdiction to hear the complaint. The Board therefore proceeded with the hearing.

Property Description

- [2] The subject property (the subject) was identified as a non-residential property, an automotive dealership comprised of a 2.29 acre land parcel improved with a 12,850 square foot (SF) building constructed circa 1986. The property was shown to be located on the east side of Southridge Drive, south of Woodhaven Drive.

Background

- [3] The following assessment details were disclosed to the Board:
- (a) The Income Approach to value (IA) was utilized to calculate the assessment, based on the following sub components and IA valuation parameters:
 - i. 4,860 SF of "sales area" space; rental rate of \$30.00/SF;
 - ii. 2,400 SF of "retail area" space; rental rate of \$30.00/SF;
 - iii. 5,590 SF of "service" space; rental rate of \$25.00/SF;
 - iv. A vacancy allowance of 5.00%, an operating cost allowance of \$8.00/SF, a non-recoverable allowance of 1.00% for all the spaces shown above;
 - v. A capitalization rate (the "cap rate") of 7.00%.

Issues

- [4] The Complainant identified "an assessment amount" as the matter of complaint under Section 4 of the Assessment Review Board Complaint form. Specifically, the Complainant identified the following issues for the Board's consideration:
- (a) Does the weight of evidence support a revision of the assessed areas as follows:
 - i. Sales area of 4,730 SF?
 - ii. Upper floor area of 2,653 SF?
 - a. If so, applying a rental rate of \$17.00/SF?
 - iii. Service area of 5,330 SF?
 - (b) Does the weight of evidence support that the assessment be calculated through the Cost Approach to value (CA)?

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- (c) In the alternative, does the weight of evidence support a change of the assessment based on a rental rate of \$17.00 for all spaces?

Complainant's Requested Value

- [5] \$3,063,988 based on a CA valuation. In the alternative, \$4,230,000 based on an IA valuation based on revised area breakdowns. In the alternate, \$2,831,000 based on modified uniform rental rate.

Board's Decision

- [6] For reasons outlined herein the Board decided that a change to the assessment was required and the assessment was changed to \$4,230,000.

Position of the Parties

- [7] The parties presented documentary and testimonial evidence and arguments in support of their respective positions. Their key positions are summarized as follows:

Complainant's Position

- [8] The Complainant advocated that the subject be changed for the following reasons:
- (a) Assessed areas: The Complainant provided plans of the subject in support of the subject space configuration and the requested area revisions. Further, it referenced two car dealership assessments from the Town of Okotoks where the sales area and service area were assessed under the same IA valuation parameters as the subject. Both of those assessments included upper floor areas which were assessed through a rental rate of \$17.00/SF.
 - (b) CA valuation: The Complainant argued that the IA is not a good valuation approach for automotive dealerships as they are often "purpose built" and owner occupied, thus limiting the availability of leasing data and the development of rental rates. It provided valuation guide excerpts suggesting the CA as an effective valuation tool for "special purpose properties". It presented a CA valuation based on the Marshall & Swift online valuation service (M&S), resulting in a valuation of \$1,420,684, for the subject building. In association, it provided a land value analysis of eight Okotoks land sales, resulting in a valuation of \$1,643,304 for the subject land component. The total CA valuation was \$3,063,988. Further, it questioned the reliability of automotive dealership sales and provided third party reporting regarding a 2011 sale in the City of Calgary which may have included vehicles, pursuant to an "Asset Purchase Agreement".

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- (c) Common rental rate: In support of its requested rental rate the Complainant provided a lease summary of eight locations, seven of which were from other jurisdictions. One, supported by lease excerpts, was reported as a lease renewal for \$17.00/SF, dated September 2018, from a 46,284 sf “box store” property in the Town of Okotoks, which reportedly included a “significant auto-service component and garages”.
- (d) In rebuttal, the Complainant discussed automotive dealership transactions, argued that the sale of the subject encompassed business enterprise value and provided sales reports and documentation, presented details regarding the discussed Calgary automotive dealerships and submitted information regarding M&S valuation procedures.

Respondent's Position

- [9] The Respondent advocated that the assessment not be changed. It argued that the assessment was supported by the sale of the subject in March 2018 for \$4,950,000 and by an appraisal for the same amount. The indicated assessment to sales ratio (ASR) for the sale was reported as 0.956. The Complainant also referenced an April 2018 sale of another Okotoks automotive dealership for \$4,700,000. The Complainant's key submissions in response to the Complainant's submissions are summarized as follows:
- (a) Assessed areas: The Respondent questioned the timing and purpose of the plans, noting that they were not supported by municipal permits confirming the work. It advocated that the plans should not be relied on without appropriate permit records.
 - (b) CA valuation: The Respondent argued it was unnecessary and inequitable to consider a valuation process different from similar properties. In addition to the two sales in Okotoks, it referenced five automotive dealership transactions from the City of Calgary to support that market evidence was available. It argued that the CA may not provide the market value required by the *Act*. The Respondent questioned the classification entries and depreciation allowance made by the Complainant in its M&S calculation. Further, it queried the locations and adjustments utilized in the Complainant's land valuation.
 - (c) Rental rate adjustment: In support of the assessed rental rate the Respondent spoke to the location of the subject, including road access at the front and rear of the property. It provided a “what-if” scenario to support that the requested changes would result in assessments resulting in inappropriate ASR results for the two automotive dealerships sold in 2018. It argued that the requested changes would be inequitable. Further, the Respondent questioned the

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particulars of the lease submitted by the Complainant, suggesting a land lease was involved.

Board's Discussion and Findings

- [10] Upon a review of all documentary submissions, testimony and arguments and the legislative authorities noted under Appendix "A", the Board found the weight of evidence to support a change of the assessment.
- [11] In the interest of brevity the Board will confine its comments to the evidence found relevant to the determination of the issues identified under paragraph [4].
- [12] Assessed areas: The Board understood the area breakdown provided by the Complainant to be supported by unrefuted plans. The Board was mindful of the Respondent's position regarding permits, but was not persuaded that the plans were unsupported without permit evidence. Further, the Board understood the photographs provided by the parties to support the plans submitted by the Complainant and that the subject did in fact have an upper area. The comparables provided by the Complainant were the only submitted evidence of upper space valuations, with "upper office" and "mezzanine" space indicating an assessed rental rate of \$17.00/SF. In summary, the Board found the Complainant's revised areas and resulting assessments to be supported and persuasive.
- [13] CA valuation: The *Act* and attendant regulations offered no direction on the valuation approach to be used in the calculation of the subject assessment. It is therefore unnecessary for the Board to comment at large on the merits of any one valuation approach over another. Rather, in deciding the complaint the Board had to determine whether or not the assessment was fair and equitable, taking into consideration the valuation and other standards and procedures set out in the *Act* and attendant regulations, and the assessments of similar property in the municipality.
- [14] The valuation guide referenced by the Complainant in support of a CA based valuation was noted by the Board to include the following:
- "The aim of this manual is to provide a guide that assists the assessor in valuing the improvements for special purpose properties.
- ...
- Special purpose properties are designed to fulfil specific manufacturing and/or production functions...."
- [15] In light of the above, the Board was not persuaded that the subject would fit under the definition of "special purpose properties".

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- [16] The Board noted the Complainant's M&S valuations to indicate "Cost Data As Of: 05-2020". The Board was not persuaded the M&S reports generated a valuation reflective of the July 1, 2019, valuation date for the assessment.
- [17] The land use zoning designation for the subject was shown as "CHWY – Highway Commercial". None of the Complainant's land sales were thus zoned. The Complainant utilized a +25% adjustment within its land value calculation in account of "the superior location and zoning" of the subject. Lacking market based support for this adjustment, the Board was not persuaded by the Complainant's land sale analysis.
- [18] In light of the above, the Board found the Complainant's CA valuation to be unconvincing.
- [19] Rental rate: There was no market based information before the Board to indicate car dealership market information outside the Town of Okotoks was relevant to the subject assessment. The board therefore gave no weight to that evidence.
- [20] The reported lease renewal for \$17.00/SF, dated September 2018, regarding a 46,284 SF "box store" property in the Town of Okotoks, was interpreted by the Board to be effectively unrefuted. While a definition of the "Leased Premises" was not provided by the Complainant, there was no evidence before the Board to support the Respondent's suggestion this was (partially) a land lease. The Board noted the lease excerpts to indicate the "fair market rent" was determined "... on the basis of a similar facility in a comparable area and reflecting the fact that the Tenant is an anchor or major tenant". Further that "... "similar facility" as used herein means premises similar in age and use to the Leased Premises...". The Board thus understood the identified property characteristics to be fundamental to the establishment of the renewed rental rate requested by the Complainant. Though the parties eventually appeared to agree on the location of the renewed lease, the limited evidence was found by the Board not to address the comparability of "age", "use" "area" (location) or tenancy between the two properties. The Board was therefore not persuaded that the lease renewal provided an effective rent indicator for the subject.
- [21] In summary, the Board found the Complainant's rental rate request to be unconvincing.
- [22] The Board was mindful of the Complainant's concern that the subject sale was a transaction where the seller had "... transferred the business, assets, inventory, real property, goodwill and business operations ...". The sales evidence before the Board is summarized as follows:
- (a) 100 Woodgate Road (the subject): No Land Title Certificate was before the Board. The seller indicated a consideration of \$2,700,000 on the Transfer form

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before the Board. On the Affidavit of Value of Land before the Board the buyer indicated a consideration paid and a true value of the land of \$4,950,000. The two third party reports both indicated a sale price of \$2,700,000 though one did indicate the discrepancy between the Transfer and the Affidavit of Value. A separate mortgage document indicated this property and two others were listed as collateral security for a demand loan mortgage to the purchaser by a lending institution. The appraisal referenced by the Respondent was not before the Board.

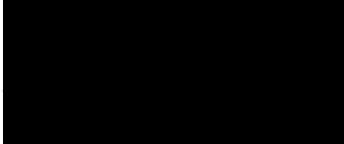
- [23] In light of the contradictory information provided in the Transfer or the Affidavit, and lacking a Land Title Certificate, the Board was not persuaded that either document provided sufficient clarity regarding the subject sale and gave that transaction no weight.
- [24] There were no sale details provided by either party regarding the other Okotoks automotive dealership sale reported by the Respondent.
- [25] In light of the above discussion, (including paragraph [12]), the Board found the weight of evidence to support a change of the assessment to reflect the following area breakdown and IA valuation parameters:
 - (a) 4,730 SF of “sales area” space; rental rate of \$30.00/SF;
 - (b) 2,653 SF of “upper floor” space; rental rate of \$17.00/SF;
 - (c) 5,330 SF of “service” space; rental rate of \$25.00/SF;
 - (d) A vacancy allowance of 5.00%, an operating cost allowance of \$8.00/SF, a non-recoverable allowance of 1.00% for all the spaces shown above;
 - (e) A capitalization rate (the “cap rate”) of 7.00%.
- [26] A prior Board decision was provided to the Board. While this Board has the utmost respect for the decisions rendered by other panels, it was understood that decision reflected on issues and evidence considered in that hearing and was not binding on this Board. The documentary evidence and arguments considered by the other panel in its hearing was not established to be timely, relevant and materially identical to those before the Board on the present complaint. In summary, this Board did not find the prior decision to be helpful in determining the complaint before it. This decision was based solely on the evidentiary submissions and arguments before this Board relating to the issues identified under paragraph [4] above.
- [27] The legal references provided were duly considered by the Board.

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Board's Conclusion

[28] The assessment under complaint was recalculated in keeping with the Board's finding under paragraph [25] and changed to \$4,230,000 (truncated).

Dated at the Town of Okotoks in the Province of Alberta this 20th day of August 2020.



for

I. Zacharopoulos
Presiding Officer
(On behalf of the Board)

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APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING

AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. Doc C-1	Complainant's Disclosure (54 pages)
2. Doc C-2	Complainant's Rebuttal (42 pages)
3. Doc R-1	Respondent Disclosure (41 pages)

An application for Judicial Review may be made to the Court of Queen's Bench with respect to a decision of an assessment review board.

An application for Judicial Review must be filed with the Court of Queen's Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to

- (a) the assessment review board*
- (b) the Complainant, other than an applicant for the judicial review*
- (c) an assessed person who is directly affected by the decision, other than the Complainant,*
- (d) the municipality, and*
- (e) the Minister.*

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APPENDIX “B”

LEGISLATIVE AUTHORITIES CONSIDERED BY THE BOARD

Municipal Government Act, R.S.A. 2000, Chapter M-26 (the MGA)

s. 1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.

s. 289(2) Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for the property...

s. 460.1(2) Subject to section 460(14), a composite assessment review board has jurisdiction to hear complaints about

(a) any matter referred to in section 460(5) that is shown on

(i) an assessment notice for property other than property described in subsection (1)(a)

s. 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

...

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations, and

(c) the assessments of similar property or businesses in the same municipality.

Matters Relating to Assessment and Taxation Regulation, 2018 A.R. 203/2017

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s. 1(g) “mass appraisal” means the process of preparing assessments for a group of properties using standard methods and common data and allowing for statistical testing.

s. 5 An assessment of property based on market value

(a) must be prepared using mass appraisal

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property.

s. 6 Any assessment prepared in accordance with the *Act* must be an estimate of the value of a property on July 1 of the assessment year.

s. 9(1) When an assessor is preparing an assessment for a parcel of land and improvements to it, the valuation standard for the land and improvements is market value...