

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

A. Eastham, Panel Member

J. Gosse, 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
0020180	100, 4 Westland Road	\$13,873,000

This complaint was heard on the 3rd day of July 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

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 4.84 acre land parcel improved with two buildings, one (34,205 square feet (SF)) constructed circa 2013 and the other (8,103 SF) constructed circa 1985. The property was shown to be located at southwest corner of the intersection Southridge Drive and Big Rock Trail.

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. 15,390 SF of "main building sales area" space; rental rate of \$30.00/SF;
 - ii. 10,950 SF of "main building service area" space; rental rate of \$25.00/SF;
 - iii. 5,515 SF of "main building upper office" space; rental rate of \$17.00/SF;
 - iv. 2,350 SF of "main building upper storage" space; rental rate of \$1.00/SF;
 - v. 3,278 SF of "quick lane building front sec." space; rental rate of \$30.00/SF;
 - vi. 4,825 SF of "quick lane building rear sec." space; rental rate of \$25.00/SF;
 - vii. 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;
 - viii. A capitalization rate (the "cap rate") of 7.00%.

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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 that the assessment be calculated through the Cost Approach to value (CA)?
 - (b) In the alternative, does the weight of evidence support a change of the assessment based on the following revised IA valuation parameters:
 - i. A rental rate of \$17.00/SF for the main building?
 - ii. A rental rate of \$15.00/SF for the quick lane building?

Complainant’s Requested Value

- [5] \$10,687,900 based on a CA valuation. In the alternative, \$9,203,000 based on a revised IA valuation.

Board’s Decision

- [6] For reasons outlined herein the Board decided that a change to the assessment was not required and the assessment was confirmed.

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:
- 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”. The Complainant presented a CA valuation based on the Marshall & Swift online valuation service (M&S), resulting in a valuation of \$7,214,735, for all improvements at the subject. In association, it provided a land value analysis of eight Okotoks land sales, resulting in a valuation of \$3,473,184 for the land component of the subject. The total CA valuation was \$10,687,919. Further, the Complainant questioned the reliability of automotive

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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".

- (a) Rental rate for the main building: 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".
- (b) Rental rate for the quick lane building: The Complainant provided an analysis of six leases, three reported as Okotoks "retail" locations (dated between August 2003 and February 2015) and three reported as "auto repair" locations in the City of Calgary (dated between June 2014 and June 2016), concluding on a median of \$16.38/SF and an average of \$16.18/SF.
- (c) In rebuttal, the Complainant discussed automotive dealership transactions, argued that the two sales referenced by the Respondent included business enterprise value and provided sales reports and documentation, presented details regarding the discussed Calgary locations 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 two 2018 sales of automotive dealerships in the Town of Okotoks and reviewed the assessment to sales ratios (ASRs) of those sales to indicate the IA valuation parameters were producing good valuations. The Complainant's key submissions in response to the Complainant's submissions are summarized as follows:

- (a) CA valuation: The Respondent argued it was unnecessary and inequitable to consider a different valuation process. In addition to the two sales in Okotoks, it referenced five automotive dealership transactions from the City of Calgary to support that market evidence is 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.

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- (b) Rental rate adjustments: In support of the assessed rental rates the Respondent spoke to the location of the subject, including access to two reported commercial corridors offering access to the north and east sides of the subject, to support the similar assessed rental rates for the two buildings on site. It provided a “what-if” scenario to support that the requested changes would result in assessments resulting in inappropriate ASR results at the two properties sold in 2018. It argued that the requested changes would be inequitable. Further, the Respondent questioned the 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 no 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] 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.
- [13] 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....”
- [14] In light of the above, the Board was not persuaded that the subject would fit under the definition of “special purpose properties”.
- [15] 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.

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- [16] 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.
- [17] In light of the above, the Board found the Complainant’s CA valuation to be unconvincing.
- [18] Rental rate for the main building: 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.
- [19] 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 main building.
- [20] Rental rate for the quick lane building: There was no market based information before the Board to indicate information from outside the Town of Okotoks was relevant to the subject assessment. The board therefore gave no weight to that evidence.
- [21] The three retail leases from the Town of Okotoks were noted by the Board to be dated, with one dating back to 2015 and the others another decade older. In light of the July 1, 2019, valuation date, the Board found this evidence not to be time appropriate and gave it no weight.
- [22] In summary, the Board found the Complainant’s rental rate requests to be unconvincing.

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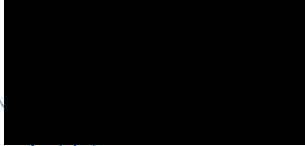
- [23] The Board reviewed the two time appropriate automotive dealership sales provided by the Respondent. The Board was mindful of the Complainant's concern that sellers had "... transferred the business, assets, inventory, real property, goodwill and business operations ..." The sales evidence before the Board is summarized as follows:
- (a) 12 Southridge Drive (Southridge): The Land Title Certificate registered April 19, 2018, indicated a consideration and value of \$4,700,000. A single third party reporting of the sale indicated the sale price as \$4,700,000. No other information was before the Board on this transaction.
 - (b) 100 Woodgate Road (Woodgate): No Land Title Certificate was before the Board. The seller indicated a consideration of \$2,700,000 on the Transfer form 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.
- [24] Unlike reporting of the Calgary dealership sale referenced by the Complainant, there was no documentation of non real estate considerations with the two Okotoks sales. Neither party provided evidence to support adjustments for time.
- [25] The Board interpreted the evidence to provide clarity regarding the sale price for the Southridge sale but confusion regarding the Woodgate sale. Noting no evidence to support otherwise, the Board found the Southridge sale to be a valid indicator of automotive real estate values in Okotoks and gave this market evidence substantial weight.
- [26] 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 Woodgate sale and gave that transaction no weight.
- [27] Upon reflection on the lease renewal discussed under paragraph [19] and the Southridge sale, the Board found the sale to a more reasonable market indicator as it reflected on the same type of property as the subject. Thus, the Respondent's "what if" analysis, indicating that a change to the assessment was not supported by market evidence, was persuasive to the Board.
- [28] In light of the above discussion, the Board found the weight of evidence to support no change to the assessment.
- [29] The legal references made before the Board were duly considered by the Board.

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Board's Conclusion

[30] The Board concluded the assessment would not be changed and it was therefore confirmed.

Dated at the Town of Okotoks in the Province of Alberta this 19th 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 (51 pages)
2. Doc C-2	Complainant's Rebuttal (47 pages)
3. Doc R-1	Respondent Disclosure (42 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.

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

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...