

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
D. Mullen, Panel Member
R. Nix, 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
0086900	101 Northgate Drive	\$10,835,000

This complaint was heard on the 29th 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.
- [2] A preliminary matter was raised by the Respondent who argued that the Complainant had not identified the assessment it was requesting under Section 5 of the Assessment Review Board Complaint (the "complaint") form. It noted that while the complaint form indicated a requested assessment of \$14,200,000, the Complainant was now requesting an assessment of \$8,217,000. The Respondent maintained this was particularly impactful because the original request would in fact have resulted in an increase to the assessment to which the Respondent would provide no argument. Thus, the Respondent had not made a submission to Board in response to the complaint.
- [3] The Respondent suggested the following potential outcomes:
 - (a) A dismissal of the complaint;
 - (b) A change of the assessment to \$14,200,000;
 - (c) A rescheduling of the hearing if a merit hearing was held.
- [4] The Complainant noted that the complaint had been filed on time, that the requested assessment was a typographical error and the accompanying attachment to the complaint form set out the reasons for complaint in fuller detail, including a requested assessment reduction.
- [5] Further, the Complainant's disclosure had been filed in time and set out the Complainant's reasons and evidence for the complaint, including a requested assessment reduction.

Board's Discussion and Decision on the Preliminary Matter

- [6] The Board was informed that a jurisdictional hearing was held regarding this complaint on May 26, 2020. The Board decided at that time to dismiss the Respondent's application to invalidate the complaint under s 295(4) of the *Act*.
- [7] The *Matters Relating to Assessment Complaints* Regulation, 2018 AR 201/2017 (MRAC) includes the following under Part 1:

"Documents to be filed by complainant"
3(1) If a complaint is to be heard by a panel of an assessment review board, the complainant must

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(a) complete and file with the clerk a complaint in the form set out in Schedule 1, and

...

- (2) If a complainant does not comply with subsection (1),*
(a) the complaint is invalid, and
(b) the panel must dismiss the complaint.”

- [8] It was not refuted that the Complainant filed a timely complaint against the assessment, including the form set out under Schedule 1. The filed complaint form indicated a requested assessment of \$14,200,000. Under s 5 – *Reasons for Complaint* of the complaint form, the Complainant entered “Please see attached”. The attached reasons for complaint indicated a “Requested Assessed Value” of 6,500,000. Under bullet 3. of the attached reasons, the Complainant entered “The correct information or requested assessed value is \$6,500,000”.
- [9] In light of the above, although it was noted that there was an inconsistency in the requested assessment between the complaint form and the attached reasons for complaint, the Board found the evidence to indicate that the Complainant had filed a complaint against the assessment as per s 3 of *MRAC*. Further, that upon review of the attached reasons for the complaint, it was reasonable for the Respondent to anticipate that the requested assessment was \$6,500,000.
- [10] In that there was no question regarding the payment of the complaint fee by the Complainant, the Board found the evidence to indicate a complaint was properly filed against the assessment as per s 3(1) of *MRAC*. The Board found no reason to act under s 3(2) of *MRAC*.
- [11] Part 1 of *Matters Relating to Assessment and Taxation Regulation (MRAT)* also includes the following:

“Disclosure of evidence

9(1) In this section, “complainant” includes an assessed person or taxpayer who is affected by a complaint who wishes to be heard at the hearing.

(2) If a complaint is to be heard by a local assessment review board panel, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 42 days before the hearing date,*
- i. disclose to the respondent and the local assessment review board the documentary evidence, a summary of the testimonial evidence, including any signed witness reports, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and*
 - ii. provide to the respondent and the local assessment review board an estimate of the amount of time necessary to present the complainant’s evidence;*

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- (b) *the respondent must, at least 14 days before the hearing date,*
 - i. *disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and*
 - ii. *provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence; ..."]*

[12] It was not refuted that the Complainant had filed its disclosure documents in accordance with s 9(2)(a) of *MRAC*. The Board found timely disclosure by the Complainant provided the Respondent sufficient opportunity to review the Complainant's submission and make a determination on how it wished to proceed under s 9(2)(b) of *MRAC*.

[13] The Respondent did not make a disclosure.

[14] Part 1 of the *MRAC* also includes the following:

"Postponement or adjournment of hearing

18(1) Except in exceptional circumstances as determined by a panel of an assessment review board, the panel may not grant a postponement or adjournment of a hearing.

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be..."

[15] The Board found the Respondent's determination not to provide disclosure did not present "exceptional circumstances". The Board thus decided not to grant a postponement or adjournment (rescheduling) of the hearing.

[16] In light of the above, the Board decided to proceed with the merit hearing. The parties were limited to the submissions properly disclosed as shown under Appendix A. The Respondent's submission included assessment information not disclosed to the Complaint prior to the hearing. That information was not heard by the Board.

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Property Description

- [17] The subject property (the subject) was identified as a non-residential property, an automotive dealership comprised of a 260,488 square foot (SF) land parcel improved with a 36,625 SF improvement constructed circa 2008. The property was shown to be located on the southwest corner at the intersection of 338 Avenue and Highway 2A.

Background

- [18] The Complainant indicated that the assessment details were not disclosed by the assessor. It provided the following potential assessment parameters to the Board:
- (a) The assessment was reportedly based on the Income Approach to value (IA), further to the following sub components and IA valuation parameters:
 - i. 10,610 SF of “retail” space; rental rate of \$30.00/SF;
 - ii. 18,139 SF of “service” space; rental rate of \$23.00/SF;
 - iii. 4,915 SF of “office” space; rental rate of \$17.00/SF;
 - iv. 2,350 SF of “mezzanine” space; rental rate of \$1.00/SF;
 - v. 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;
 - vi. A capitalization rate (the “cap rate”) of 7.00%.

Issues

- [19] 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 entire building?
 - ii. An operating cost allowance of \$9.00/SF for the entire building?

Complainant’s Requested Value

- [20] \$8,217,000 based on the CA valuation. Alternatively, \$8,129,000 based on the revised IA valuation.

Board’s Decision

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

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Position of the Parties

- [22] The Complainant presented documentary and testimonial evidence and arguments in support of its position. In light of the discussion under the preliminary matter, the Respondent was limited to questioning the Complainant's evidence and to closing argument. The evidence before the Board is summarized as follows:

Complainant's Position

- [23] 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" and presented a CA valuation based on the Marshall & Swift online valuation service (M&S), resulting in a valuation of \$5,152,836 for the improvements at the subject. In association, it provided a land value analysis of two Okotoks land sales, reporting the same zoning as the subject, resulting in a valuation of \$3,064,699 for the land component of the subject. The total CA valuation was \$8,217,000 (rounded). Further, the Complainant provided third party reporting of a 2011 sale in the City of Calgary which may have included vehicles, pursuant to an "Asset Purchase Agreement".

- (a) 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 "significant auto-service component and garages".
- (b) Operating cost allowance: The Complainant argued that an increase to the operating cost allowance was supported as the subject had no access to Town water and sewer services.

Respondent's Position

- [24] The Respondent advocated it was unnecessary and inequitable to consider a different valuation process for the subject from other similar properties, all assessed according to IA parameters. It questioned the classification entries and depreciation allowance made by the Complainant in its M&S calculation. Further, it queried the comparability of the Complainant's land sales to the subject.

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Board's Discussion and Findings

- [25] 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.
- [26] 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 [19].
- [27] 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.
- [28] 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...."
- [29] In light of the above, the Board was not persuaded that the subject would fit under the definition of "special purpose properties".
- [30] 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.
- [31] In light of the above, the Board found the Complainant's CA valuation to be unconvincing.
- [32] 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.
- [33] 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

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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 building.

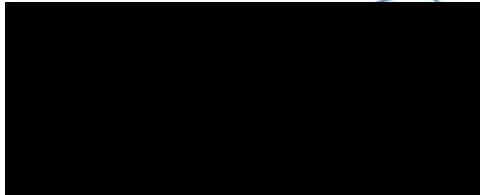
- [34] Operating cost allowance: While the Complainant's argument the subject had no access to Town water and sewer services was effectively unrefuted, the Board found no market based evidence to support the requested operating cost allowance.
- [35] In summary, the Board was not swayed by the Complainant's IA valuation evidence.
- [36] Prior Board decisions were provided to the Board. While this Board has the utmost respect for the decisions rendered by other panels, it was understood that those decisions reflected on issues and evidence considered in those hearings and were not binding on this Board. The documentary evidence and arguments considered by other panels in their hearings were not established to be timely, relevant and materially identical to those before the Board on the present complaint. Further, the Board was mindful that the two decisions from the Town of Okotoks were dated October and November, 2014. In summary, this Board did not find the prior decisions 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 [19] above.
- [37] The legal references provided were duly considered by the Board.
- [38] In light of the above discussion, the Board found the weight of evidence to support no change to the assessment.

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Board's Conclusion

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

Dated at the Town of Okotoks in the Province of Alberta this 4th day of September 2020.



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

This decision includes typographical corrections included in the original decision under paragraphs [11] and [12].

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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 (46 pages)
2. Doc C-2	Complainant's Rebuttal on the Preliminary Matter (83 pages)
3. Doc R-1	Respondent Disclosure on the Preliminary Matter (3 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...