

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
0075027	235 Milligan Drive	\$11,239,000

This complaint was heard on the 2nd 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, a retail shopping centre located on a 3.25 acre land parcel improved with a building constructed circa 2008 of 24,082 square feet (SF). The property was shown to be located on the southeast corner of Milligan Drive and 32 Street and identified as the Drake Landing Mall.

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. Unit 100 – 1,365 SF: “Chow Bella”; rental rate of \$28.00/SF;
 - ii. Unit 103 - 1,480 SF: “Leap N’Learn”; rental rate of \$28.00/SF;
 - iii. Unit 107 – 1,477 SF: “Kutie Nails”; rental rate of \$28.00/SF;
 - iv. Unit 109 – 1,536 SF: “Brown Sugar”; rental rate of \$28.00/SF;
 - v. Unit 111 – 1,536 SF: “Cooperators”; rental rate of \$28.00/SF;
 - vi. Unit 113 – 1,477 SF: “Econo Liquor”; rental rate of \$28.00/SF;
 - vii. Unit 115 – 1,788 SF: “Darren Diakow”; rental rate of \$28.00/SF;
 - viii. Unit 117 - 1,108 SF: “Christopher’s”; rental rate of \$28.00/SF;
 - ix. Unit 200 – 2,940 SF: “7-Eleven”; rental rate of \$40.00/SF;
 - x. Unit 300 – 3,175 SF: “Tom’s”; rental rate of \$32.00/SF;
 - xi. Unit 401 & 403 – 2,478 SF: “Cannabis Cowboys”; rental rate of \$28.00/SF;
 - xii. Unit 405 – 1,245 SF: Vacant; rental rate of \$28.00/SF;
 - xiii. Unit 407 - 1,239 SF: “Namaste”; rental rate of \$32.00/SF;
 - xiv. Unit 409 - 1,238 SF: “Identity”; rental rate of \$28.00/SF;
 - xv. 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;

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xvi. A capitalization rate (the “cap rate”) of 6.00%.

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 issues for the Board’s consideration were as follows:
- (a) Does the weight of evidence support a change of the assessment based on the following revised IA valuation parameters?
 - i. A rental rate of \$29.50/SF for the restaurant spaces;
 - ii. A rental rate of \$25.00/SF for the retail space;
 - iii. A vacancy allowance of 5.75% for all spaces;
 - iv. An operating cost allowance of \$11.25/SF for all spaces;
 - v. A non-recoverable allowance of 2.50% for all spaces;
 - vi. A cap rate of 7.50%.

Complainant’s Requested Value

- [5] \$7,952,000.

Board’s Decision

- [6] For reasons outlined herein the Board decided that a change to the assessment was required and the assessment was reduced to \$10,709,000.

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 assessed according to the requested IA valuation inputs for the following reasons:
- (a) Restaurant rental rate: The Complainant referenced four restaurant space leases within the Town of Okotoks. The four leases, dated between April 2017 and March 2020, were analyzed to support a median rental rate of \$28.13/SF and an average rental rate of \$28.56/SF.
 - (b) Retail rental rate: The Complainant referenced a purported comparable property located on Southridge Drive in support of the requested retail rate. It

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argued it was inequitable that the assessed retail rate at the subject was \$28.00/SF while the assessed retail rate at the purported comparable retail space was \$25.00/SF. The Complainant referenced four lease renewals at the subject, all lower than the base lease they replaced. It identified four reportedly renewed lease renewals at the premises, all trending down and none as high as the assessed rental rates, to support that the assessed rental rates were not market based and need to be reduced. Further, it referenced a purported similar property with an assessed retail rental rate of \$25.00/SF.

- (c) Vacancy allowance: The Complainant noted that the assessed vacancy rate allowance had been constant since 2018. It argued that market conditions did not support this and provided a vacancy rate analysis, comprised of three retail properties in the Town of Okotoks, indicating an average vacancy of 5.62%.
- (d) Operating cost allowance: The Complainant indicated that the assessed operating cost allowance had been constant since 2016. It argued that market factors did not support this and provided an operating cost allowance analysis, comprised of 48 locations in the Town of Okotoks, indicating an average operating cost of \$10.82/SF and median of \$11.20/SF.
- (e) Non-recoverable allowance: The Complainant suggested that the assessed non recoverable allowance was a “historical value” and not representative of current market conditions. It provided excerpts from valuation guides in support of its non-recoverable allowance analysis, comprised of three retail properties in the Town of Okotoks, indicating an average non-recoverable expense of 2.54%. The Complainant also provided a chart of assessed non-recoverable allowances in other Alberta jurisdictions, supported by assessment records from the jurisdictions.
- (f) Cap rate: The Complainant provided an analysis of three sales in support of its requested cap rate. The transactions occurred between September 2016 and March 2019 and the sold properties were all located in the Town of Okotoks. Details on the transactions, including third party reports were provided in support of the Complainant’s analysis. The Complainant also argued that it was inequitable for the subject assessment to be based on cap rate of 6.00% while the assessments of two allegedly comparable properties were based on a cap rate of 7.00%.
- (g) In summary, the Complainant’s rebuttal discussed the reliability of opinions of value related to appraisals, the reported similarities of the purported comparable properties, the requested IA components, the additional sales referenced by the Respondent in speaking to the cap rate issue and provided past Board decisions and legal references.

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Respondent's Position

- [9] The Respondent advocated that the assessment not be changed. It provided the cover page of an appraisal of the subject dated March 2, 2018, opining that the "current market value of the leased fee of the subject property, effective February 20, 2018" was \$11,100,000.
- [10] The Respondent argued that although the Complainant had presented alternate IA valuation parameters, it had not disproved the assessment through market evidence. It contended that changing the IA valuation parameters for the subject would disturb the equity of the assessment base at large. The Respondent's key submissions regarding the IA valuation parameters are summarized as follows:
- (a) Restaurant rental rate: The Respondent argued that the assessed rental rate was in line with the subject's actual income and with the assessed rental rate at the purported comparable property.
 - (b) Retail rental rate: The Respondent argued that the subject's assessed effective gross income was supported by its actual income and provided an analysis in support. It indicated that the Complainant's submission "misrepresents lease step provisions as lease renewals and omits pertinent information".
- [11] The Respondent revised the Complainant's chart of assessed non-recoverable allowances in Alberta jurisdictions and included reported assessed vacancy allowances, operating cost allowances and cap rates from these jurisdictions. It concluded that the IA valuation model applied in the subject assessment and other Town of Okotoks properties was reasonable. Further, it submitted the following:
- (a) Vacancy allowance: The Respondent noted that the subject had no "significant vacancy" since construction. It argued that the vacancy allowance is intended to reflect "long term stabilized vacancy and credit loss" and provided a what-if long term analysis to suggest the assessed vacancy allowance supported three years of total vacancy over a 60 year economic life of the subject. It argued that the assessed vacancy allowance was within the revised summary of other Alberta jurisdictions.
 - (b) Operating cost allowance: The Respondent indicated that data from the subject was "averaged with results from other similar properties to reach a group conclusion for mass appraisal calculations". It argued that the Complainant's analysis was unsupported by market evidence and its request not supported by the revised summary of other Alberta jurisdictions.
 - (c) Non-recoverable allowance: The Respondent argued that the Complainant's analysis was flawed and its request was not supported by the revised summary of other Alberta jurisdictions.

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- (d) Cap rate: The Respondent indicated that the assessed cap rate was supported by work completed by “independent appraisers ... when preparing market value appraisals in Okotoks”. It provided a summary of six such reported appraisals (including the subject), dated between April 2015 and November 2019. It also provided the analysis of two sales, dated February 2014 and January 2015, indicating a calculated cap rate of 6.0% (rounded). Further, the Respondent provided an alternate cap rate conclusion for 18 Southridge Drive, one of the sales analyzed by the Complainant, varying the net operating income calculation through use of “actual rent & market rent on vacant space at time of sale”, thus producing a cap rate conclusion of 4.85%. It argued that the Complainant’s request was not supported by the revised summary of other Alberta jurisdictions.

The Respondent countered the Complainant’s equity argument by suggesting the properties were of different age, size, class and character. Further, that “potential to increase the building area” and surplus land area of the subject supported a lower cap rate. The Respondent submitted that “... consideration is given to differences in Actual Use, Market Location, Land Use Designations, Surplus land areas, the amount of Street frontages and local competition in the area”.

Board’s Discussion and Findings

- [12] 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 to \$10,709,000.
- [13] In the interest of brevity the Board will confine its comments to the evidence found relevant to the determination of the issues identified above.
- [14] The Board noted that the appraisal cover page submitted by the Respondent provided “an opinion of the current market value on an all-cash basis of the leased fee interest in the subject property as of the effective date of February 20, 2018”. The appraisal report was not before the Board. Thus, the Board had no access to the valuation parameters utilized by the appraiser. Section 5 of the *Matters Relating to Assessment and Taxation Regulation*, 2018 A.R. 203/2017 (“MRAT”) directs that assessments based on market value “... must be an estimate of the value of the fee simple estate in the property...”. Further, there is no legislative or regulatory direction to base assessments on “all-cash basis”. In light of the above limitations and inconsistencies, the Board placed no weight on the opinion of value provided in the appraisal cover page.
- [15] The Board found the weight of evidence to support the following:

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- (a) Restaurant rental rate: Two of the four restaurant space leases provided by the Complainant were understood by the Board to be time appropriate for the July 1, 2019, valuation date. The lease identified as Unit D115, dated March 2020, was post facto to the valuation and given no weight by the Board. The lease identified as Unit 309 was three months post fact to the valuation and given minimal weight in terms of trending. The two remaining leases were not refuted by the Respondent and supported an average rental rate of \$29.50/SF. The Board thus found the weight of evidence to support the requested restaurant rental rate of \$29.50/SF. It follows that the restaurant rental rate was changed accordingly.
- (b) Retail rental rate: The parties disagreed on whether the lease summaries provided to the Board constituted market based renewals or predetermined step-up rents. The excerpts and summaries provided by the disagreeing parties were not supported by the lease documentation required to resolve the matter. The Board was therefore not swayed by the submitted lease summaries. Further, the Board noted that the Complainant's purported comparable was some distance from the subject and was not persuaded by market based information of comparability between the properties. In summary, the Board found the weight of evidence did not support a change to the assessed retail rental rate.
- (c) Vacancy allowance: The Board understood the market based analysis provided by the Complainant (which was noted by the Board to include space at the subject) to be effectively unrefuted by the Respondent. The Respondent provided no market based evidence in support of the assessed vacancy allowance. In light of the annual property assessment process, the Board was not persuaded by the Respondent's references to the subject's economic life. The Board therefore found the weight of evidence to support the Complainant's request and the vacancy allowance was changed to 5.75%.
- (d) Operating cost allowance: The Board understood the market based analysis provided by the Complainant (which was noted by the Board to include the subject) to be effectively unrefuted by the Respondent. The Respondent provided no market based evidence in support of its reference to "mass appraisal calculations". The Board therefore found the weight of evidence to support the Complainant's request and the operating cost allowance was changed to \$11.25/SF.
- (e) Non-recoverable allowance: The Board understood the market based analysis provided by the Complainant (which was noted by the Board to include the subject) to be effectively unrefuted by the Respondent. The Board acknowledged the Respondent's concern that "structural allowances" not be

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included in a non-recoverable allowance. Notwithstanding the Complainant's analysis headings, the Board did not interpret the Complainant's "supporting documentation" to include "structural allowances". The Board therefore found the weight of evidence to support the Complainant's request and the operating cost allowance was changed to 2.50%.

- (f) Cap rate: The Board understood the Complainant's cap rate analysis to utilize the reported "actual" net operating income ("NOI") under Index #2 and a reverse assessment based determination of "typical" NOI for the other two transactions. The Board was mindful of mass appraisal valuation processes and legal precedent (including *Westcoast Transmission v. British Columbia (Vancouver-Assessor of Area #9)*, [1987] B.C.J. No. 1273 (S.C.) as referenced by the parties) regarding the consistent use of concepts in the development and application of cap rates. Further to the observation above regarding the shift between actual and typical NOIs, the Board understood the Complainant was not consistent in the use of valuation concepts. The Board was mindful of the determination of typical IA components for the other issues under paragraph [4]. Lacking market based evidence to support consistency between the actual and typical NOI calculations, the Board placed no weight on the Complainant's analysis of Index #2. The two remaining sales resulted in an average cap rate indicator of 7.03%. The Board acknowledged the two sales referenced by the Respondent but found they were dated and not relevant to the July 1, 2019 valuation date. Further, the Board was not swayed by the Respondent's repeated references to actual rents in support of its calculations. The Respondent's references to the six appraisal reports were not supported by the appraisals themselves and were given no weight. In light of the above, the Board therefore found the weight of market evidence not to support the Complainant's requested cap rate. However, this market evidence did not support the assessed cap rate of 6.00%.

The Complainant referenced two purportedly comparable properties on Southridge Drive where the assessed cap rate was 7.0%. The Board understood the evidence to indicate the properties exhibited similar "Actual Use" (shopping centres) but not "Market Location" (they were some distance from each other) or "Land Use Designation" (C-SC for the subject and GATE for the purported comparables). The Board was thus not persuaded the properties exhibited similarities that would support a common cap rate approach.

In summary, the Board found the weight of evidence did not support the Complainant's request, or a common cap rate for the properties. It follows that the assessed cap rate was not changed.

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- [16] In general, the Board was mindful of the Respondent's references to equity regarding all the issues discussed above. In light of very limited information regarding the development and application of IA allowances within the community at large and in the face of conflicting and largely unrefuted market based evidence from the Complainant, the Board did not find the Respondent's referrals to equity to be persuasive. Rather, the Board found the weight of evidence to support the specific findings presented above.
- [17] The Board acknowledged the assessment information presented by both parties from other jurisdictions. The Board looked to s 467(3)(c) of the *Act* and was not swayed to take into account assessment information from outside the municipality.
- [18] 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 only one decision was from the Town of Okotoks and was dated October 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 [4] above.
- [19] The legal references provided and were duly considered by the Board.

Board's Conclusion

- [20] Further to the discussion above the Board concluded that the assessment was not fair and equitable and a change was required. In summary, the Board concluded that the weight of evidence supported the following:
- (a) A change of the rental rate for the restaurant spaces to \$29.50/SF;
 - (b) No change to the assessed retail rental rate of \$28.00/SF;
 - (c) A change of the vacancy allowance for all spaces to 5.75%;
 - (d) A change of the operating cost allowance for all spaces to \$11.25/SF;
 - (e) A change of the non-recoverable allowance for all spaces to 2.50%;
 - (f) No change to the assessed cap rate of 6.00%.
- [21] The assessment under complaint was recalculated in keeping with the Board's findings and changed to \$10,709,000 (truncated).

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It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta this 14th 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 (28 pages)
2. Doc C-2	Complainant's Capitalization Rate Appendix (87 pages)
3. Doc C-3	Complainant's Non-Recoverable Appendix (33 pages)
4. Doc C-4	Complainant's Rebuttal (84 pages)
5. Doc R-1	Respondent Disclosure (38 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...