

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
0058275	300, 201 Southridge Drive	\$15,184,000

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, a retail shopping centre comprised of a 5.39 acre land parcel improved with a building constructed circa 2004 of 49,023 square feet (SF). The property was shown to be located on the east side of Cimarron Common and south of the Cimarron Parkway, forming part of the Cornerstone Shopping Centre.

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 111 - 1,521 SF of "Starbucks" (restaurant) space; rental rate of \$32.00/SF;
 - ii. Unit 115 - 1,874 SF of "Okotoks Eyeware" (retail) space; rental rate of \$25.00/SF;
 - iii. Unit 301 - 2,567SF of "Vacant was Payless" (retail) space; rental rate of \$25.00/SF;
 - iv. Unit 303 - 1,018 SF of "Cornerstone" (retail) space; rental rate of \$25.00/SF;
 - v. Unit 305 - 1,035 SF of "Harvest Moon" (retail) space; rental rate of \$25.00/SF;
 - vi. Unit 307 - 1,884 SF of "Cornerstone" (retail)space; rental rate of \$25.00/SF;
 - vii. Unit 309 - 1,366 SF of "Quiznos" (restaurant) space; rental rate of \$32.00/SF;
 - viii. Unit 315 - 5,116 SF of "Reitmans" (retail) space; rental rate of \$19.00/SF
 - ix. Unit 321 - 795 SF of "Classic Cycle" space; rental rate of \$1.00/SF;
 - x. Unit 321 - 4,814 SF of "Classic Cycle" (retail) space; rental rate of \$25.00/SF;

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- xi. Unit 325 - 1,450 SF of "Spa" (retail) space; rental rate of \$25.00/SF;
- xii. Unit 331 - 1,453 SF of "Bone & Biscuit" (retail) space; rental rate of \$25.00/SF;
- xiii. Unit 332 - 1,337 SF of "Chopped Leaf" (retail) space; rental rate of \$25.00/sf;
- xiv. Unit 333 - 1,424 SF – of "My Thuy" (retail) space; rental rate of \$25.00/SF;
- xv. Unit 335 - 1,555 SF of "M&M" (retail) space; rental rate of \$25.00/SF;
- xvi. Unit 341 - 9,386 SF of "Mark's" (retail) space; rental rate of \$19.00/SF;
- xvii. Unit 351 - 1,613 SF of "Domino's" (restaurant) space; rental rate of \$32.00/SF
- xviii. Unit 361 - 2,543 SF of "Warehouse One" (retail) space; rental rate of \$25.00/SF
- xix. Unit 365 - 2,057 of "The Source" (retail) space; rental rate of \$25.00/sf;
- xx. Unit 372 - 4,215 SF of "Brick" (retail) space; rental rate of \$25.00/SF;
- xxi. 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;
- xxii. 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 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 vacancy allowance of 5.75% for all spaces;
 - iii. An operating cost allowance of \$11.25/SF for all spaces;
 - iv. A non-recoverable allowance of 2.50% for all spaces;
 - v. A capitalization rate (the "cap rate") of 7.50%.

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Complainant's Requested Value

[5] \$13,542,000.

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 \$14,517,000.

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 three restaurant space leases within the Town of Okotoks, including one from the subject property. The three leases, dated between April 2017 and January 2019, were analyzed to support a median rental rate of \$29.25/SF and an average rental rate of \$29.42/SF.
 - (b) **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%.
 - (c) **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 \$11.20/SF.
 - (d) **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.

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- (e) 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.
- (f) In summary, the Complainant's rebuttal spoke to the Respondent's submission. Specifically, it addressed the timing of the additional sales referenced by the Respondent in speaking to the cap rate issue, the IA valuation components proposed by the Complainant and provided past Board decisions and legal references.

Respondent's Position

- [9] The Respondent advocated that the assessment not be changed. It 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 questioned the timing and location of the Complainant's lease references. It advocated that actual rents supported the assessed rents, including the assessed restaurant rent.
- [10] 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.

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- (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.
- (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, 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.

Board's Discussion and Findings

- [11] 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 \$14,517,000.
- [12] 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]:
 - (a) Restaurant rental rate: The Complainant's lease references were observed by the Board to be time appropriate for the July 1, 2019, valuation date. Further, the evidence was interpreted by the Board to indicate that the Unit 309 lease was a negotiated extension from March 2017 and the Unit 407 lease was located at the Cornerstone shopping centre. The Respondent's reference to actual rents at the subject was not helpful as there were no time appropriate restaurant leases shown. The Board thus found the weight of evidence to support the requested restaurant rental rate of \$29.50/SF. It follows that the assessed restaurant rental rate was changed accordingly.
 - (b) Vacancy allowance: The Board understood the 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 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%.

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- (c) 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.
- (d) 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 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%.
- (e) 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 found the weight of evidence not to support the Complainant’s requested cap rate. It follows that the assessed cap rate was unchanged.

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- [13] 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.
- [14] 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.
- [15] 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.
- [16] The legal references provided and were duly considered by the Board.

Board's Conclusion

- [17] 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) A change of the vacancy allowance for all spaces to 5.75%;
 - (c) A change of the operating cost allowance for all spaces to \$11.25/SF;
 - (d) A change of the non-recoverable allowance for all spaces to 2.50%;
 - (e) No change to the assessed cap rate of 7.00%.
- [18] The assessment under complaint was recalculated in keeping with the Board's findings and changed to \$14,517,000 (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 (22 pages)
2. Doc C-2	Complainant's Capitalization Rate Appendix (42 pages)
3. Doc C-3	Complainant's Non-Recoverable Appendix (33 pages)
4. Doc C-4	Complainant's Rebuttal (79 pages)
5. Doc R-1	Respondent Disclosure (35 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...