

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

BETWEEN:

Anchorbay Holdings Inc. – Complainant

- and -

Town of Okotoks – Respondent

BEFORE:

H. Kim, 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
0079180	8 Banister Gate	\$2,720,000

This complaint was heard on the 15th day of July 2020 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Assessment Advisory Group
 - D. Lee, Agent
- Anchorbay Holdings Inc.
 - L. Wildman

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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Property Description and Background

- [1] The subject property is a vacant 2.72 acre (118,483 square foot) commercial parcel located at 8 Banister Gate, at the southeast intersection of Banister Gate and Northridge Drive in the North Central part of the Town of Okotoks (Town). It is districted Direct Control and assessed using the direct sales comparison approach based on \$1,000,000 per acre, resulting in the assessment under complaint of \$2,720,000.

Issues

- [2] The Complaint form listed as reasons for complaint that the assessment is in excess of market value, incorrect and inequitable to similar properties, and the assessment land price per acre is too high in comparison to similar sales price per acre. At the hearing, the issues argued were:
1. Is the sale price of the parcel at 10 D'Arcy Ranch Drive an indicator of market value?
 2. If it is not, what is the appropriate rate per acre for the subject assessment?

Requested Assessment

- [3] The Complainant requested the assessment be reduced to \$1,468,000 based on \$540,000 per acre.

Issue 1: Sale of 10 D'Arcy Ranch Drive

Complainant's Position

- [4] The assessment increased from \$1,890,000 in 2019 to \$2,720,000 in 2020. The basis for the increase was a single sale at 10 D'Arcy Ranch Drive, and the Complainant submitted that this sale was not arm's length and should not be relied on as an indicator of market value. The title transferred on September 17, 2019 for \$13,816,000 from 2015 United Alberta Lands GP Ltd. to Anthem D'Arcy Commercial Holdings GP Ltd. It was a 13.94 acre parcel and was the basis for the assessment of \$1,000,000/acre.
- [5] The Complainant presented third-party real estate reports, from Commercial Edge and RealNet, both of which stated that the sale was not arm's length. Corporate searches for the purchaser and the vendor showed a director on the list for both companies. The definition of market value in the *Act* states:
- 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;

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- [6] The parcel at 10 D'Arcy Ranch Drive was not sold on the open market and cannot be used to determine market value for assessment purposes.

Respondent's Position

- [7] The subject site is located where major urban growth has occurred recently. Areas to the south and east were developed in the mid-1990s, but areas to the north and west are now experiencing significant growth, currently being serviced and developed for residential and commercial uses, as evidenced by ortho photographs from 2016 compared to 2018. The subject area is a gateway to the Town, with traffic counts of 25,000 vehicles per day on Northridge Drive north of the subject.
- [8] The Respondent agreed that the assessment at \$1,000,000 per acre was primarily based on the sale at 10 D'Arcy Ranch Drive. It is located kitty-corner from the subject site and sold for \$13,816,000 or \$991,105 per acre, which was rounded up to \$1,000,000 per acre for assessment purposes. The Respondent indicated that the third-party real estate reports were not reliable and the Town does not use them, highlighting errors in the reports to support his position. The Respondent validated the purchase, and presented excerpts from the purchase agreement dated June 27, 2019. The Respondent noted the following in support of his position that the sale could be relied on as an indicator of market value:
- The vendor and purchaser had different addresses, in Calgary and Vancouver respectively.
 - There is no evidence of how the buyer and seller might be related other than only one director common to both corporations.
 - A buyer verification information request was made to the seller's representatives, who sent it to the buyer's representatives, who then requested an additional two months to prepare the purchaser verification information. This indicates the seller had no relation to the purchaser.
 - Market value is a collection of opinions, ideally represented by considering a number of transactions; however, indicators of market value can also be found in appraisals, offers to purchase, listing prices, responses to Requests for Proposals, expert opinions, and Affidavits of Value. Affidavits of value are frequently provided and required during Court of Queen's Bench hearings.
 - Consideration paid was \$13,816,000 and the Affidavit re: Value of Land made under oath in accordance with the Land Titles Act lists the same \$13,816,000 value.

Decision on Issue 1

- [9] The sale at 10 D'Arcy Ranch Drive was not an arm's length sale and cannot be relied on as an indicator of market value.

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Reasons

- [10] The titles submitted into evidence show that the parcel was created by subdivision on July 30, 2019, after the date of the purchase agreement, and the vendor listed on the agreement, 2015 United Okotoks Lands L.P., was a different entity than the vendor shown on the title at the time of transfer. Due to these discrepancies, the Board does not to accept the Respondent's position that the excerpts from the purchase agreement provided in evidence demonstrate that the purchaser and vendor were independent parties.
- [11] The Board notes that the title transferred on September 17, 2019. Documents registered on the title include a mortgage dated September 17, 2019 for \$11,743,600 from the vendor. This indicates a vendor take-back mortgage of 85% of the purchase price which could indicate an atypical transaction.
- [12] The Board considered the registrations on the current title to be the most compelling evidence that the sale did not represent a market transaction. A mortgage from the Toronto Dominion Bank (TD Mortgage) dated March 14, 2017 for the original principal amount of \$20,000,000 notes "Affects part of this title." An amending agreement dated November 11, 2017 is listed, in the amount of \$50,000,000 and another on January 2, 2019 is also listed, in the amount of \$85,000,000. A copy of the current title dated July 6, 2020 submitted by the Complainant show the TD Mortgage and amending agreements were still on title.
- [13] The Board is of the opinion that if the sale had in fact been arm's length, the TD Mortgage would have been discharged relatively quickly after the transfer of title. The fact that it remains on title after almost one year indicates that the sale was not between unrelated parties and should not be relied on as an indicator of market value.

Issue 2: Market Value

Complainant's Position

- [14] The Complainant stated there was no basis for the significant increase in the assessment. Two equity comparable assessments were submitted showing the change from 2019 to 2020. The assessment of a DC site was unchanged, and the assessment of a church decreased between 2019 and 2020. In comparison, the subject parcel had a 44% increase in the assessment.
- [15] The DC district for the subject parcel states the site shall be used for commercial establishments that rely primarily on patronage from surrounding neighbourhoods, and includes a requirement for a parking analysis. The land at 10 D'Arcy Ranch Drive is intended for a much larger shopping centre, and is not, in fact, comparable

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to the subject.

- [16] The Complainant presented 16 vacant land sales from January 2015 to February 2019, of which 14 had parcel sizes from 1.07 to 3.98 acres that sold for between \$441,698 and \$806,452 per acre. The other two sales were 15.89 acres that sold for \$225,000 per acre and 273.91 acres at \$120,478 per acre. The mean and median of the 16 sales are \$542,344 and \$540,564 respectively and are the basis of the requested assessment of \$540,000 per acre.

Respondent's Position

- [17] The Respondent noted that the majority of the sales presented by the Complainant were of industrial land, which are not comparable due to differences in permitted uses and location, with no potential for commercial retail uses.
- [18] The Complainant's list includes a sale at 258 Northridge Dr, which is actually located at 33 Sage Way. It was a 3.31 acre R-3 parcel purchased in March 2019 by the Town for \$2,648,000 or \$800,000 per acre. This site was considered a low indicator of value because the intended use was socially assisted residential units. It had residential zoning and no arterial access points.
- [19] The mixed use medium density (MUM) sites on the Complainant's list of sales are in inferior neighbourhood collector locations, and sale prices are trending upwards. Asking prices are currently \$1,000,000 per acre for a 2.31 acre parcel, compared to the most recent sale in January 2018 of a 2.55 acre parcel located at 1 Drake Landing BV for \$700,000 per acre in mid-2018. This site is identified on the Complainant's list as 465 Milligan Drive. It was also considered a low value indicator due to the inferior location on the eastern periphery of the Town on a neighbourhood collector street. Milligan Drive and 32 Street has only 11,000 vehicles per day, compared to the 25,000 at the subject location.
- [20] The Respondent considers the best indicator of value to be the sale at 10 D'Arcy Ranch Drive. It was also considered to be a low value indicator as it is a significantly larger parcel, and was designated UH Urban Holdings at the time of the sale. The Respondent submitted that the assessment reflects market value and should be confirmed.

Decision on Issue 2

- [21] The market value of the subject property for assessment in 2020 should be set at \$700,000 per acre.

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Reasons

- [22] The Board did not consider the industrial sales cited by the Complainant to be good comparables for a commercial property on a major thoroughfare. Two of the properties in the Complainant's list were significantly larger than the subject and their sale price per acre were much lower than the other sales that were more similar in size to the subject. Accordingly, the Board rejected the Complainant's analysis that suggested \$540,000 per acre was an appropriate estimate of market value.
- [23] With respect to the Respondent's market indicators, the Board did not consider the sale at 10 D'Arcy Ranch Drive to be indicative of market value, for the reasons noted in Issue 1. The Board likewise does not consider the asking price for an unsold property to be an indicator of market value; therefore, the \$1,000,000 per acre assessment was also determined to be inappropriate.
- [24] The Board identified three sales on the Complainant's list of vacant land sales that in its opinion were good comparables: the two MUM parcels in Drake Landing, and the DC site purchased by the Town. They were relatively recent sales of parcels similar in size to the subject. The Board recognizes that the MUM parcels are in a different location east of the subject but considers them have similar desirability. The DC site, while intended for residential, is in close proximity to the subject and has similar exposure to Northridge Drive. The selling price of the three comparables were \$600,000, \$700,000 and \$800,000 per acre. The average and median of the three sales is \$700,000 per acre which the Board determined to be a reasonable indicator of market value for the subject property.

CARB's Decision

- [25] The assessment is reduced to \$1,904,000 based on \$700,000 per acre.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta this 11th day of August 2020.



for

H. Kim
Presiding Officer

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APPENDIX "A"
DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*