

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

BETWEEN:

2127187 Alberta Ltd. - 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	Assessment Class
0077660	101 Cimarron Grove Circle	\$383,000	Non-Residential

This complaint was heard on the 22nd day of June 2022 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- A. Patel
- K. Patel (by teleconference)

Appearing on behalf of the Respondent:

- D. Genereux, Assessor, Town of Okotoks
- R. Beckner, Assessment Administrator, Town of Okotoks

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Property Description and Background

- [1] The subject property is a 1,087 square foot one-storey wood frame house with developed basement and double attached garage. It was constructed in 2005 on a corner lot and the land is districted the TN - Traditional Neighbourhood District of the Land Use Bylaw. It is used for a day care business and assessed on the sales comparable approach. The assessment class on the subject assessment is non-residential.

Issues

- [2] The only issue is whether the assessment class of the subject property should be residential instead of non-residential.

Requested Assessment

- [3] The amount of the assessment is not under complaint. The matter under complaint is the assessment class, and is requested to be residential instead of non-residential.

Complainant's Position

- [4] The Complainant purchased the property and business in October 2019. The MLS listing indicated the 2018 property taxes, and the Complainant obtained the financial statements at the time of purchase, which reflected the residential zoning. After the purchase, the first years' assessed value and class were consistent with that before the transaction; however, without any notice to the business owner, the Respondent changed the assessment class, resulting in increased property taxes. The Complainant missed the deadline to complain in 2021 but was able to file the complaint for the subject year.
- [5] The Complainant noted that the same laws existed before the transaction. The Respondent admitted that it was the Town's error, and had to be corrected; however, the Town had left the assessment class as residential for more than a decade without change, even at the time of the transaction. Correcting it at this stage triggers additional operational costs and adverse effects on the existing business - the Complainant thoroughly assessed and relied on data provided by the seller at the time of the transaction. The business was running at a loss; therefore, the Complainant carefully reviewed the expenses and especially the property tax amount to make a decision whether to buy. The Complainant presented financial statements supplied before the transaction in support of this position.
- [6] Even after two years of operations, the business is still running at a loss. Current financial statements were provided. The change in the assessment class results in

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the business now incurring additional, unforeseen operating costs, and this adversely affects the business as well as the resale value of the property. The Complainant stated they are expending personal savings to keep the business in operation, and are not in a position to sustain additional cost due to the Respondent's ignorance or mistake. The Complainant requested that the assessment class remain residential.

- [7] In response to questions, the Complainant confirmed that the property operated as a day care and there were no residents living in the subject property.

Respondent's Position

- [8] The Respondent stated that legislation requires property to be classed according to its use. The property is not used for residential purposes and changing the assessment class to residential would not be in accordance with legislation, and further, inequitable with other day care businesses. The Respondent presented examples of other day care businesses in the Town that operate out of converted houses and storefronts that are classed as non-residential.
- [9] In response to questions, the Respondent stated that a day care business operated as a home occupation would likely remain in the residential assessment class, and this would be reasonable due to overlapping uses of the space within a home. The Respondent was unclear what the original development permit had stated, as the assessment department generally only receives building permit information. The Respondent became aware of the commercial use due to the MLS listing, which described the day care business with property for sale and not a residence. The assessor does receive all sales data, and noticed that the subject property was a commercial business and not a residence.
- [10] The Respondent agreed that in prior years, the assessment had assigned the property to an incorrect class; however, legislation states that if it is discovered that there is an error, omission, or incorrect description in any of the information shown on the assessment roll, the assessor may correct the assessment roll for the current year only. This was done and the property was assigned to the correct assessment class.

Decision

- [11] The assessment is confirmed and the assessment class is non-residential.

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Reasons

[12] The *MGA* is clear with respect to assigning classes of property for assessment purposes:

297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:

- (a) class 1 - residential;
- (b) class 2 - non-residential;
- (c) class 3 - farm land;
- (d) class 4 - machinery and equipment.

...

(4) In this section,

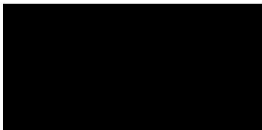
...

(b) "non-residential", in respect of property, means linear property, components of manufacturing or processing facilities that are used for the cogeneration of power or other property on which industry, commerce or another use takes place or is permitted to take place under a land use bylaw passed by a council, but does not include farm land or land that is used or intended to be used for permanent living accommodation;

(c) "residential", in respect of property, means property that is not classed by the assessor as farm land, machinery and equipment or non-residential.

[13] It is clear that in order for the subject property to be classed as residential, it would have to be used for permanent living accommodation, and the evidence of the Complainant was that it was not. Accordingly, legislation requires the property to be classed as non-residential, and the Board does not have the discretion to change it.

Dated at the Town of Okotoks in the Province of Alberta this 11th day of July 2022.



for
H. Kim
Presiding Officer

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

NO.	ITEM
1. C 2.0 to C 2.5	Complainant Disclosure
2. R 3.0	Respondent Disclosure
3. C 4.0	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.*