

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

BETWEEN:

Calgary Co-Operative Association - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

I. Zacharopoulos, Presiding Officer

A. Eastham, Panel Member

D. Mullen, Panel Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (Board) in respect of a property assessment prepared by the Assessor of the Town of Okotoks as follows:

Roll Number	Address	Assessment Class	Assessment
0048320	101 Northgate Blvd.	Residential	\$2,498,180
		Non-Residential	\$5,877,820

This complaint was heard on the 29th and 30th day of August 2022 virtually via Microsoft Teams.

Appearing on behalf of the Complainant:

- A. Izard, Agent, Altus Group Limited
- B. Robinson, Agent, Altus Group Limited (observer)

Appearing on behalf of the Respondent:

- D. Genereux, Assessor, Town of Okotoks

Attending for the Board:

- P. Huber, Clerk

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Preliminary Matters:

- [1] A preliminary matter was raised by the Complainant who argued that the Respondent had not properly disclosed a six page surrebuttal. It requested that the Board not hear the surrebuttal.
- [2] In support of its position the Complainant submitted that surrebuttals are not “intended or contemplated” in the legislation. Further, that the Complainant is intended to have the last say.
- [3] The Complainant looked to s. 9 of the *Matters Relating to Assessment Complaints (MRAC)* Regulation, 2018 AR 201/2017 in support of its position and argued that the Respondent’s surrebuttal does not follow the direction set out by *MRAC*.
- [4] The Respondent did not withdraw its surrebuttal. It argued that the Complainant’s rebuttal was substantial and the surrebuttal was an appropriate response that should be considered by the Board.
- [5] In support of its position, the Respondent looked to s. 464 of the *MGA* and argued that the Board was not bound by the rules of evidence and may choose to admit the surrebuttal. Further, that the Board should not restrict itself by not admitting the surrebuttal.
- [6] The Respondent noted that it submitted its surrebuttal four days before the merit hearing and this was sufficient time for a review of the six page document by the Complainant.

Board’s Discussion and Decision on the Preliminary Matter:

- [7] *MRAC* includes the following:

“Disclosure of evidence

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

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

...

(c) the complainant must, at least 7 days before the hearing date, disclose to the respondent 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 complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in

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sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

Issues and evidence before panel

10 A composite assessment review board panel must not hear

...

(b) any evidence that has not been disclosed in accordance with section 9.” (underline emphasis added)

- [8] The Board noted that s. 9(c) directs to “... allow the respondent to respond to or rebut the [complainant’s rebuttal] evidence at the hearing.”
- [9] The Board considered whether the Respondent’s surrebuttal addressed issues arising from the Complainant’s rebuttal.
- [10] The Board interpreted the Respondent’s surrebuttal to expand on its disclosure identified as item No. R-1 (Respondent’s Disclosure) under Appendix “A” rather than rebut the Complainant rebuttal (item No. C-2 under Appendix “A”). This included:
- a. citations from the MGA and attending regulations,
 - b. assessment principles,
 - c. additional information relating to the sale of the subject, including Alberta Land Titles procedures,
 - d. additional details regarding properties discussed within R-1.
- [11] There was no argument that the Complainant’s rebuttal was filed on a timely basis and the Respondent could therefore respond or rebut the evidence therein at the merit hearing.
- [12] In that the information provided in the Respondent’s surrebuttal was found to be an expansion of its submission rather than a response to the Complainant’s rebuttal, the Board decided not to allow the six page (R-2) surrebuttal document.

Property Description:

- [13] The subject property (the “subject”) is a 15.89 acre parcel located south of and accessed from Northgate Boulevard, west of Highway 2A. The improvements are a 1,972 square foot (SF) house and garage and a 872 SF shed.

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Background:

- [14] The following assessment details were provided:
- Lot size 15.89 acres; 692,168 SF; 0.40% floor area ratio
 - Building age: 1969
 - Market value land: 3 acres @ \$500,000/acre = \$1,500,000
 - Former farm value area: 12.89 acres @ 500,000/acre = \$6,445,000
 - House and garage: 1,917 SF @ \$213.62/SF = \$409,500
 - Shop: 872 SF @ 25.29/SF = \$22,050
 - Total Assessment: \$8,376,000 (truncated)
- [15] The classification of the subject assessment was apportioned as:
- Residential: \$2,498,180
 - Non-Residential: \$5,877,820.

Issues:

- [16] The Complainant checked boxes 3 (an assessment amount), 4 (an assessment class), 5 (an assessment sub-class), 6 (the type of property), 7 (the type of improvement), 9 (whether the property or business is assessable) and 10 (whether the property or business is exempt from taxation under Part 10, but not if the exemption is given by an agreement under section 364.11(11) that does not expressly provide for the right to make a complaint), as the matters of complaint under Section 4 of the Assessment Review Board Complaint form. Specifically, the Complainant contested the assessment and the assessment classification.
- [17] The following issues were before the Board:
- Issue 1: Does the weight of evidence support a change to the assessment?
 - Issue 2: Does the weight of evidence support a change to the assessment classification?

Complainant's Requests:

- [18] The Complainant presented a revised request for an assessment of \$1,702,762 and a classification of Residential for the entire assessment.
- [19] In the alternative, the Complainant suggested an assessment of \$8,376,562 and a classification of Residential for the entire assessment.

Board's Decision:

- [20] For reasons outlined herein the Board decided as follows:
- The assessment is changed to \$3,575,000 (truncated).

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- The assessment classification for the assessment of \$3,575,000 is changed to 100% Residential.

Position of the Parties

- [21] The Board considered the documentary and testimonial evidence and arguments presented by the parties in support of their respective positions. The positions and key evidence presented by the parties are summarized as follows:

Issue 1: Does the weight of evidence support a change to the assessment?

Complainant's Position:

- [22] The Complainant questioned the rationale of assessing the subject at a land rate of \$500,000/acre.
- [23] The Complainant noted that the land use designation for the subject is Agricultural and Land Holdings District (ALH). It reviewed Okotoks Land Use Bylaw 17-21 and noted the primary intent of the ALH District is to "continue to support rural agricultural activities prior to transitioning to urban style Development". Further, the mix of uses included "a variety of rural agricultural, country residential and supporting uses" and that non-residential uses are largely prohibited in the ALH District.
- [24] The Complainant noted that the subject was not serviced or tied into municipal services. Further, that the commercial auto dealerships across Northgate Boulevard to the north has installed private services that were not available to the subject.
- [25] The Complainant argued the subject was assessed as a non-residential property, higher than adjoining un-serviced, ALH zoned, properties. It reviewed the assessments of two such properties, an 8.83 acre property abutting the subject to the west (127 Northgate Drive), with a calculated (assessment/land area) indicator of \$78,143/acre, and a 17.84 acre property located immediately west of the first (139 Northgate Drive), with a calculated (assessment/land area) indicator of \$84,809/acre. It noted that on the same basis, the subject's indicator was \$527,160/acre.
- [26] In rebuttal the Complainant argued that there was no zoning, use or permits in place to suggest the subject should be valued as a commercial property. It provided a further review of Land Use Bylaw 17-21 and identified the commercial use restrictions that impacted the subject but not commercially designated properties.

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- [27] The Complainant reviewed the sales referenced by the Respondent and submitted as follows:
- Notwithstanding the sales evidence submitted by the Respondent, its sales references, all serviced properties designated for commercial use, were not assessed at a rate of \$1,000,000/acre:
 - after an adjustment for partial construction, the indicated assessed land rate for the sale at 10 D'Arcy Ranch Drive was \$771,337/acre;
 - the indicated assessed land rate for the sale at 21 D'Arcy Ranch Drive was \$900,000/acre; and
 - the indicated assessed land rate for the sale at 33 Sage Way was \$849,170/acre.
 - The sale at 10 D'Arcy Ranch Drive involved related parties, was not exposed to the open market and included a vendor take-back mortgage and a participation agreement on profits from a future sale of the property once developed.
 - 33 Sage Way was a municipal property.
- [28] In summary, the Complainant argued that the Respondent's sales evidence was unreliable as was the application of a base land rate for designated commercial properties. Rather, the Complainant relied on the evidence from the Northgate Drive properties.
- [29] Further to the two Northgate Drive comparables, the Complainant adopted a land rate of \$80,000/acre and calculated its requested assessment as follows:
- 12.89 acres @ \$80,000/acre = \$1,031,200
 - 3 acres @ \$80,000/acre = \$240,000
 - House and garage: 1,917 SF @ \$213.62/SF = \$409,510
 - Shop: 872 SF @ 25.29/SF = \$22,053
 - Total Requested Assessment: \$1,702,762

Respondent's Position:

- [30] The Respondent advocated that the assessment was correct and should not be changed.
- [31] The Respondent argued that the critical planning document was the Northwest Okotoks Area Structure Plan (NWASP) as it designates future commercial use and "increased the certainty of use for the subject site to future commercial land".
- [32] The Respondent reviewed the sale of the subject for \$3,575,250 and noted that there had been much development and growth in the area in the years that followed.

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- [33] The Respondent reviewed the assessment history of the subject, increasing from \$1,785,000 in tax year 2020 to \$1,935,890 in 2021 to \$8,376,000 in 2022. The increase from 2021 to 2022 was due to the removal of a farmland designation on 12.89 acres and moving that assessment from a regulated to a market assessment.
- [34] The Respondent looked to the NWASP and the designation therein of the subject as North Gateway Retail Commercial. It noted the intent of the designation was to “accommodate a mix of retail ... ultimately expected to accommodate a mix of Retail Commercial Uses and Business Park employment uses”. The Respondent also looked to the designation of the North Gateway Centre within the NWASP, as the subject was shown to be located within that area, noting it was “intended to accommodate the commercial needs of residents...”.
- [35] The Respondent submitted that the subject “is inline of imminent commercial land development. Therefore, the Highest & Best Use for valuation is a short term interim holding use pending commercial land development in conformance with the Area Structure Plan”.
- [36] The Respondent indicated that the subject was assessed according to a base land rate of \$1,000,000/acre with a 50% reduction for lack of servicing, noting this is “an industry wide accepted ratio used in like situations”. It noted there were no sales data for “un-serviced land for commercial development”. In support of the \$1,000,000/acre base rate the Respondent referenced three, time appropriate sales, reportedly ranging from \$800,000 to \$991,105/acre with a “recent” resale for \$1,100,000/acre. The Respondent spoke of the “present worth of future benefits” as a critical criterion for the determination of the assessment.
- [37] The Complainant submitted that “deep municipal service lines” were very close to the subject. Further, it submitted that the subject was in a better location than the two Northgate Drive properties submitted by the Complainant as comparable to the subject. Further, it stated there was a potential for a farmland assessment component on those two properties. The Complainant argued that the subject was closer to redevelopment and the thus comparison to the Northgate Drive properties was inappropriate.

Issue 2: Does the weight of evidence support a change to the assessment classification?

- [38] The Complainant advocated that the classification of the subject as non-residential was incorrect.
- [39] The Complainant submitted that the subject is being rented to members of the original homestead family, who permanently reside on the property but are unable to farm. It submitted the lease “for residential accommodation only” dated January

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15, 2016, with an end date of January 31, 2019. Further, it provided correspondence from the owner to support the lessee has remained on site on a month-to-month basis.

- [40] The Complainant reviewed s. 297 of the *MGA*, noting that “non-residential” “does not include ... land that is used or intended to be used for permanent living accommodation”. It argued that there is no doubt the subject was used for permanent living accommodation as set out by the lease.
- [41] The Complainant noted there was no application to change the subject’s land use designation, thus any discussion of commercial development was anticipatory and unsupported.

Respondent’s Position:

- [42] The Respondent argued that the classification “cannot be changed to residential because the property is being used as a holding use pending commercial land development”. This was viewed as a choice of the owner and not permanent living accommodations.
- [43] The Respondent indicated its process was to look forward for assessment and classification purposes. It argued there is “no evidence indicating any intent for the house to be used for permanent living accommodations, but plenty of evidence dictating short lives for those buildings”. The month-to-month rental was not seen by the Respondent as indicative of a permanent living accommodation.
- [44] The Respondent opined that the NWASP was a binding document that took precedence over municipal land use designations. Further, that the classification as non-residential aligned with the future use.

Board’s Discussion and Findings:

- [45] The Board reviewed all documentary submissions, testimony and arguments from the parties and the legislative authorities noted under Appendix “A”. In the interest of brevity, the Board will confine its comments to the evidence found relevant to the determination of the issue identified under paragraph [16].

Issue 1: Does the weight of evidence support a change to the assessment?

- [46] The Respondent’s commitment to looking forward was acknowledged by the Board. However, care is needed to not overlook the characteristics as of the valuation date of July 1, 2021, or the condition date of December 31, 2021, as set

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out by s. 289(2)(a) of the *MGA* and s. 6 of the *Matters Relating to Assessment and Taxation Regulation, 2018*, Alberta Regulation 203/2017 (*MRAT*).

- [47] Municipal services and land use designation were characteristics the Board understood to be significant in the analysis of market evidence. The Board found these not to be similar between the subject and the Respondent's market references.
- [48] The Board found the evidence to indicate the ALH designation imposed land use restrictions on the commercial development of the subject. Further, that the subject was not hooked into municipal services and there was doubt as to whether they were in fact available to the subject.
- [49] The reliability of the sales at 10 D'Arcy Ranch Drive and 33 Sage Way was effectively questioned by the Complainant. Further, the land rate of \$1,000,000/acre was not established as the basis of assessment for the commercial properties brought forward by the Respondent.
- [50] Notwithstanding the Respondent's submission that a -50% adjustment appropriately addressed the market value variance between serviced and un-serviced properties, there was no market based evidence or analysis provided to establish this.
- [51] The Respondent's equity evidence was unconvincing to the Board in light of the Respondent's testimony that the purported comparable assessments included a regulated farmland component. Thus, the Board was not swayed to accept the Respondent's \$80,000/acre conclusion due to the lack of clarity regarding the assessments of the Northgate Drive purported comparables. The Board also was not persuaded to accept the requested assessment of \$1,702,762, noting it was less than the January 2016 sale price of the subject.
- [52] In fact, the Board found the January 27, 2016, sale of the subject to be a reasonably time effective indicator for un-serviced ALH land. The Board was also mindful of the market evidence regarding Northgate Drive properties. The Board noted the immediate proximity of the properties, the similarity in property characteristics, including lack of municipal services and ALH designation, but also the subject's superior exposure to Highway 2A. The sale of 127 Northgate Drive in 2013 for \$111,363/acre and the expired listing in 2021 of 139 Northgate Drive at \$123,539/acre were interpreted by the Board to support the 2016 sale of the subject at \$225,000/acre. In short, the Board found this to be the market evidence that best reflected on the subject's characteristics. No evidence was before the Board to support time adjustments to this market evidence.
- [53] In summary, the Board found the weight of evidence to support a change in the assessment to \$3,575,000 (truncated), based on a land rate of \$225,000/acre.

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Issue 2: Does the weight of evidence support a change to the assessment classification?

[54] The classification of the subject assessment is pursuant to s. 297(4) of the MGA:

“(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; (underline emphasis added)

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

[55] There is no argument that the subject should be classed as farmland, or machinery and equipment.

[56] The Board understood the Respondent’s non-residential classification to reflect its anticipated redevelopment of the property to a point when commerce or another use takes place or is permitted to take place under a land use bylaw passed by council. However, the Board was persuaded that as of both the valuation date of July 1, 2021, and the condition date of December 31, 2021, Okotoks Land Use Bylaw 17-21 restricted a commercial redevelopment use of the subject until such time as an application was approved to redesignate the subject. No such application was shown to be

[57] The Board was not persuaded by the Respondent’s argument that the NWASP was a binding document that took precedence over municipal land use designations. Further, the Board understood the long term and permanent use of the subject as of the condition date of December 31, 2021, was for living accommodation.

[58] In summary, the Board found the weight of evidence to support a classification of the entire assessment as residential.

[59] The Board was mindful of prior Board decisions and the legal references made by the parties. While this Board has the utmost respect for the decisions rendered by other Board panels, it was understood that those decisions reflected 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

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this Board on the present complaint. This decision was based solely on the evidentiary submissions and arguments before this Board relating to the issues identified under paragraph [17] above. The Board was mindful of the legal references made by the parties.

Board's Conclusion:

- [60] In keeping with the Board's analysis and finding under paragraph [53], the assessment is changed to \$3,575,000 (truncated).
- [61] In keeping with the Board's analysis and finding under paragraph [58], the assessment classification for the assessment of \$3,575,000 is changed to 100% Residential.

Dated at the Town of Okotoks in the Province of Alberta this 7th day of October 2022.



for

I. Zacharopoulos
Presiding Officer

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APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. PC-1	Revised Preliminary Issue
2. C-1	Complainant's Disclosure
3. R-1	Respondent's Disclosure
4. C-2	Complainant's Rebuttal
5. R-2	Response to Rebuttal (not admitted)

An application for Judicial Review may be made to the Court of King's Bench with respect to a decision of an assessment review board.

An application for Judicial Review must be filed with the Court of King'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.*