

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:

Anthem D’Arcy Commercial Holdings GP Ltd.
as represented by Altus Group Limited (Complainant)

- and -

Town of Okotoks (Respondent)

BEFORE:

G. Sokolan, Presiding Officer
A. Eastham, Panel Member
D. Mullen, Panel Member

This is the decision of the Town of Okotoks Composite Assessment Review Board (CARB) in respect of a complaint of an amended property assessment prepared by the Assessor of the Town of Okotoks and entered into the 2022 assessment roll as follows:

| Roll Number | Address | Assessment Class | Assessment |
|--------------------|-----------------------|-------------------------|-------------------|
| 0122100 | 10 D’Arcy Ranch Drive | Non-Residential | \$18,751,000 |

This complaint was heard on the 10th day of May and 7th day of June 2023 virtually via Microsoft Teams.

Appearing on behalf of the Complainant:

- A. Izard, Agent, Altus Group Limited
- B. Robinson, Agent, Altus Group Limited

Appearing on behalf of the Respondent:

- C. Jukiwski, Reynolds Mirth Richards & Farmer LLP
- D. Genereux, Assessor, Town of Okotoks

Attending for the Assessment Review Board (ARB):

- P. Huber, Clerk

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Property Description

[1] The property under complaint (the subject) is a 13.94 acre (607,662 square feet (sf)) parcel that was, as of the relevant condition date of December 31, 2022, under development as a multi-tenant shopping centre, to be known as D’Arcy Crossing Shopping Centre. Finished development is projected to contain a combination of nine one and two storey buildings encompassing approximately 150,000 sf of assessable space. It is located at 10 D’Arcy Ranch Drive at the northwest corner of the intersection of D’Arcy Ranch Drive and Highway 2A (Northridge Drive). It is zoned as GC – General Commercial and the amended assessed value of \$18,751,000 has been derived by transposing costing information about the subject introduced by the Complainant’s agent during a CARB appeal of an adjacent property in August 2022.

Background

[2] This complaint relates to a parcel of land on the northwest corner of Highway 2A (Northridge Drive) and D’Arcy Ranch Drive in the Town of Okotoks (Town). It is under development as the D’Arcy Crossing Shopping Centre and received conditional development permit (DP) approval in May 2021 and building permit (BP) approval in August 2021; however, the DP was not issued until November 17, 2021, and, on December 31, 2021, construction of buildings on the site had not commenced.

[3] The original Notice of Assessment for the 2022 tax year issued on January 12, 2022, in the amount of \$14,800,000 was not appealed. An amended Notice of Assessment for \$18,751,000 was issued October 5, 2022, and the subject complaint was filed on November 25, 2022. A preliminary hearing on an application by the Respondent regarding the loss of right to file a complaint due to non-response to a request for assessment information under s. 295 of the *MGA* was held on January 19, 2023. The decision from this preliminary hearing (*Anthem D’Arcy Commercial Holdings GP Ltd. v. Okotoks, 0238-02-2022-J*) denied the application to dismiss the appeal on the basis that the Assessment Request for Information (ARFI) issued by the Respondent did not clearly identify the information that was being requested. The subject complaint was set for a merit hearing, which is the subject of today’s hearing.

Preliminary Matter

[4] As a preliminary matter, the Respondent to the merit hearing, the Town of Okotoks, raised an application under s. 465(1) of the *MGA* for the Board to compel the Complainant, Anthem D’Arcy Commercial Holdings GP Ltd., to produce certain documents related to leasing information at the subject property existing on or before December 31, 2021, indicating this information is required for the Board to properly determine whether the amended assessment represents a fair estimate of market value.

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[5] The Town of Okotoks is the Complainant in this preliminary matter and the Respondent in the merit matter; Anthem D'Arcy Commercial Holdings GP Ltd. is the Respondent in the preliminary matter and the Complainant in matters to be addressed in the merit hearing. For clarity throughout this order, the Town of Okotoks will be referenced as the Respondent and Anthem D'Arcy Commercial Holdings GP Ltd., or their agent, Altus Group Limited, will be referenced as the Complainant, notwithstanding their actual position in each matter.

[6] At the outset of this preliminary matter, the parties conjointly recommended the Board hear the arguments on this preliminary matter but that it reserve its decision until each party had presented its argument on merit issues. The Board agreed, indicating a resulting Board decision to not compel disclosure would result in ARB administration sending notice that the hearing had concluded. Alternatively, should the Board decide to compel disclosure, timelines would be set and indicated to each party, for the Complainant to disclose any required information, allowing the Respondent to respond to this disclosure, and providing an opportunity for the Complainant to provide rebuttal. Any arguments presented by either party desiring an oral presentation of evidence or to cross-examine the other party would be entertained by the Board.

Respondent's Position

[7] The original 2022 assessment notice for the subject identified an assessed value of \$14,800,000. An inequity in this assessment was brought to light through an assessment appeal of a neighbouring property (101 Northgate Blvd) in August 2022. The amended assessment notice for \$18,751,000, that is the subject of this appeal, was generated in October of 2022 to correct this inequity.

[8] All income-generating commercial properties in Okotoks are assessed using the income approach, which considers the amount of income a prospective purchaser of property might be expected to receive over the course of the investment term for that property.

[9] The Town's standard appraisal approach regarding properties under construction is to use the income approach to assess the future value of the property, based on its full "built out condition," with an annual assessment reflecting the property's current state of reaching that buildout capacity. The full built out condition requires knowledge of how prospective buyers of the property would value its worth.

[10] Several Assessment Requests for Information (ARFI) had been sent to the Complainant to provide rental income and property operating costs, but the Complainant failed to comply. As a result, the Respondent had insufficient information to generate an income based assessment.

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[11] The response to these requests was meant to be the first step in advancing a dialogue through which other value enhancing inputs to the property could be identified and quantified. In addition to lease commitments, municipal development and construction permits, attendant engineering and environmental feasibility studies, financing commitments, soft costs, and the like, all add value to the land, making it a requirement that the influences of all these attributes be reflected in income approach calculations.

[12] The Respondent identified 37 attributes that would have added value to the subject as having been completed by December 31, 2021, but in most cases the Respondent had not been able to quantify that value. The sale price of the subject was confirmed through transfer documents that are publicly available. As well, the Respondent could attempt to estimate the value of some attributes on the property, such as the cost of installing on-site utility services by referring to third party costing guidelines. In the end however, the Respondent relied on financial evidence, a “Project Summary – Standard Level 2 Pro-forma” (the Pro-forma) submitted during the 101 Northgate Blvd CARB hearing to be able to generate the amended assessment.

[13] The subject is an atypical shopping centre for the community. There are no similar properties and there is insufficient and inadequate market data available to reflect the subject’s characteristics in assessment calculations. Lease rates would include considerations of the value of these influences. Any leases signed by prospective tenants would provide significant insights into the current market value of the subject and, as such, are critical to determine if the amended assessment reflects a fair and equitable estimate of market value. This information is fundamental for the Board to be able to render such a decision.

[14] The Respondent relied on *Nortel Networks Inc. v. Calgary (City)* 2008 ABCA 370 and several CARB decisions, indicating s. 465(1) of the *MGA* provides the Board with the authority to order any party to produce documents if they are required for the purpose of the hearing, with the core consideration being whether the information requested is necessary for the Board to properly adjudicate the matter before it.

[15] Further, the Respondent assured the Board that this request to produce information is different from its previous s. 295 application to have the appeal dismissed on the basis that the Complainant had not complied with previous ARFI requests. This application is clearly asking the Board to order the Complainant to produce copies of all leases executed with prospective tenants at the subject on or prior to December 31, 2021, because this information is fundamental to determining whether the amended assessment of the subject reflects market value as of the July 1, 2021 valuation date.

[16] To support its contention that lease information does exist, the Respondent referenced a caveat registered on title by Sobeys Capital Incorporated on November 5,

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2021 regarding a lease interest, noting the date an instrument is registered at Land Titles is rarely synonymous with the date an agreement was signed. Additionally, the Respondent referenced site signage identifying “Coming Soon” tenants including Safeway and Shoppers Drug Mart; an article in the local press indicating “about 70 per cent of the shopping centre has already been leased” (page A8 of the Western Wheel, dated Wednesday, August 03, 2022); and materials extracted from the Complainant’s website just after June 7, 2022, indicating the subject “will offer tenants such as Safeway, Shoppers Drug Mart, Dollarama, Safeway Liquor, Starbucks, Pet Valu, Popeyes Chicken, CEFA and numerous medical/professional uses”.

[17] In summary, the Respondent emphasized the issue before the Board under this s.465 application is to determine if leasing information is required for the Board to conclude whether the amended assessment is a fair and equitable estimate of market value. It is not just to determine the relevance of the evidence being presented at this hearing.

[18] Should the Board compel disclosure of the requested lease information, the Respondent indicated its agreement to have the Board seal it from public record pursuant to s 464.1 of the *MGA*, should the Complainant have any concerns that the leases contain sensitive and confidential information.

Complainant’s Position

[19] The Complainant argued, according to the *MGA* and the *Matters relating to Assessment and Taxation Regulation, 2018 (MRAT)*, an assessment, in any given year, must reflect the typical market value of a property as of July 1 of the assessment year, qualified by the physical condition of the property as of December 31 of the assessment year. In this case, an assessed value as of July 1, 2021 must reflect the market value of the property at that date based on the physical condition of the property as of December 31, 2021, when compared to other similar properties within the same municipality. Notably, neither *MRAT* nor the *MGA* dictate what valuation method should be followed to arrive at an estimate of market value. An assessment reflecting market value need not be undertaken using the income approach.

[20] Any materials the Respondent referenced about lease conditions reflected on-site activity that may have occurred after the condition date. The subject property was under construction on December 31, 2021. No building permits or occupancy permits had been issued. Any leases contemplated at this time would not have yet commenced, hence no information about the revenue being generated by the subject existed. Google Maps photos taken June 2021 clearly indicate the subject in a bare land condition and similar photos taken in June 2022, six months after the condition date, indicate the frames of any buildings were still being erected. There were no walls, roofs, floors, utility connections, party walls, pavement, lighting, or anything that would even resemble leasable space.

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Any information that could be provided by any prospective lease information would have no bearing on the condition of the subject as of December 31, 2021.

[21] Accordingly, a request to produce this information would not provide anything of value for the Board to consider regarding the fair and equitable market value as of July 1, 2021. The Complainant emphasized the intent behind s. 465 of the *MGA* is to provide the Board the authority to order production of any information required to determine the case at hand. The Respondent's request does not support the case at hand. Referencing the Acton decision (*697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512), the Complainant argued the future, anticipated use of the property by the Applicant has no bearing on its market value and should not be considered in the current assessment.

[22] The Complainant suggested it is appropriate for a Board to require production of information that is required for the moving party (the Respondent) to understand the opposite party's (the Complainant's) evidence and for the Board to properly interpret and weigh the evidence (*CVG Canadian Valuation Group Ltd. v. The City of Edmonton*, 2020 ABECarb 2062 (CanLII)). This is not the case in this appeal. Not only did the Respondent not answer requests by the Complainant to provide information regarding the calculation of the assessment (as is required in s. 299. of the *MGA*), leasing information is only relevant to the income approach to valuation and this approach has not been used in either the Respondent's calculation of the amended assessment or in the Complainant's response to this assessment.

Board's Discussion and Decision on the Preliminary Matter

[23] The Board appreciates the intent of s.465 of the *MGA*, providing the authority to compel production of any material the Board considers necessary to determine the matter before it. That matter, in this hearing, is to decide if the amended assessment of \$18,751,000 represents a realistic estimate of the market value of the subject as of July 1, 2021, and a condition date of December 31, 2021. For the reasons set out below in the Board's decision of the merit hearing, the Board concludes the production of any lease materials existing for the subject on or before the condition date of December 31, 2021 is not required.

[24] Even if the Board had access to this lease information, use of it, depending on what that information was, would require the Board to actually perform an assessment calculation in the absence of any supporting evidence. That is not the purpose of this hearing. Rather the Board needs to determine if legislative requirements about the calculation of an assessment have been met and if, in the end, the amended assessment reflects a fair and equitable estimate of the subject property as of July 1, 2021, having consideration of the condition of the property on December 31, 2021.

[25] The Board determined the amended assessment does not fairly or equitably reflect

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market value of the subject. No information that may have been contained in any existing lease materials would have helped the Board reach this determination. Therefore, there would be no value in compelling the Complainant to produce such materials.

Merit Hearing

Issues

[26] The Complainant checked boxes 3 (an assessment amount), 4 (an assessment class), and 11 (extent to which the property is exempt from taxation) on the assessment complaint form. Upon questioning, the Complainant indicated that only matter 3, an assessment amount, was the basis of this appeal, with other boxes having been checked due to uncertainty, at the time of filing the complaint, about how the assessment was calculated.

[27] The following issues were before the Board:

- Is the amended assessment of \$18,751,000 a fair and equitable estimate of the market value of the subject as of July 1, 2021, and a condition date of December 31, 2021?

Complainant's Requests

[28] The Complainant requested the assessment be lowered to \$11,152,000.

Board's Decision

[29] For reasons outlined herein, the Board determines the assessment for the 2021 assessment year should be \$14,800,000.

Position of the Parties

Complainant's Position

[30] As of the July 1, 2021 valuation date and the December 31, 2021 condition date, the subject was assessed at \$1,345,122/acre; a value the Complainant contended well exceeds market value. The Complainant presented Google Maps photos of the subject from June 2021 illustrating the land was in a bare land state; no improvements existed on the subject. Photos from June 2022, which is six months after the condition date, illustrated buildings beginning to be constructed on the site. Accordingly, as of the condition date, the Complainant contended the subject should be assessed as land only.

[31] Six similar and competing suburban commercial properties within Okotoks that were assessed on their land value only were presented as comparables. These

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properties were zoned similarly to the subject, but all were smaller. They ranged in size between 2.72 acres and 7.04 acres, with a median of 3.32 acres. Assessed per acre values for these properties ranged between \$600,000 and \$900,000 with a median of \$848,000. The subject is 13.94 acres and was assessed at \$1,345,000/acre.

[32] The Complainant argued the Respondent had failed to provide calculations underlying the assessment even though such a request, under s. 299 of the *MGA*, was made to the municipality. Email correspondence between the Complainant's office and the Respondent and its office verified it had not ever been disclosed.

[33] However, in rebuttal, once the basis for the amended assessment had been revealed, the Complainant indicated the subject's 2019 purchase price for \$990,000/acre cannot be construed to reflect the market value at the time of purchase for the following reasons:

- The vendor and the purchaser are from the same corporate entity. The property was not marketed to the general public for sale and the sale circumstances did not allow for offers, so competitive market factors were not considered in the purchase price.
- The vendor provided financing for the transaction through a vendor take back mortgage. Such financial arrangements are not typically used to determine market value.
- The vendor and purchaser entered into a profit sharing agreement in the event of a future sale of the property once developed.

[34] These characteristics of the sale do not qualify it as a market value transaction as defined in s. 1(1)(n) of the *MGA*. The Complainant argued this sale transaction had been previously examined and rejected by the Board as representing market value for the property in the decision of the 101 Northgate Blvd CARB hearing (CARB Order #0238/02/2022).

[35] The Complainant contended the Respondent had not provided any evidence to show the sale price was verified as reflecting market value, as is contemplated in "2021 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual" prepared by Alberta Municipal Affairs under Ministerial Order No. MAG:017/21. The purpose of this manual is to guide the way municipalities must report assessment information to the Minister. It indicates the verification of value of sales is required to determine whether the sale is arm's length and if the buyer has received a benefit or obligation other than the value of the real property.

[36] Additionally, the Complainant identified an \$800,000 commitment by the vendor to construct improvements adjacent to the property. However, this value was later credited to the purchaser and should not be reflected in a sale price used for assessment purposes.

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[37] The Complainant challenged the Respondent's practice of basing the current assessment on a prorated portion of the value of the property at full buildout, indicating it is common practice within the province to assess properties under construction to reflect the land value and the progressive value of costs incurred to develop the property at the end of each assessment year. This practice avoids applying value on a speculative basis or beyond what is physically on the site. It ensures the property is not capturing value on an anticipatory basis.

[38] The Complainant questioned the lack of detail regarding what was covered by the \$2,294,129 worth of partial site construction and development included in the Pro-forma. A commitment in the sale agreement for the vendor to pay for all off-site levies had influenced the sale price. Inclusion of the cost of these levies in the Pro-forma would have resulted in a double counting and should not be reflected in the assessed value.

[39] Actual development costs incurred on site to December 31, 2021, as evidenced in a "D'Arcy Shopping Centre Progress Draw" dated January 4, 2022, were submitted by the Complainant, identifying a total of \$1,662,734 had been incurred. This reflected 6.9% of total site development and identified backfill and a foundation for one building and backfill for a second building, as well as sitework completed to that date both on and off the site.

[40] Finally, the Complainant rebutted the Respondent's contention the comparables presented did not have the additional "value" the subject has. Okotoks utility mapping and street view pictures of each comparable, as well as copies of current Certificates of Title, were presented to illustrate each comparable contained utility rights-of-way with the Town registered as caveator on the title, had development permits issued, were engaged in pre-leasing commitments, and were the subject of development agreements with the Town. Yet none of these properties had been assessed as punitively as the subject. In fact, they were assessed as "land only". The median assessed value of these comparables was \$848,000 versus the \$1,345,000/acre for the subject.

[41] Applying economies of scale to account for the subject being approximately 75% larger than the median of the comparables, the Complainant contended a land value of \$800,000/acre was appropriate for the subject. This contention was reinforced by the June 2020 sale of one of these comparables for \$899,759/acre. On this basis, the Complainant requested the Board adjust the assessment to \$11,152,000.

Respondent's Position

[42] As noted in discussion of the preliminary issue, the Respondent indicated it is the municipality's standard practice, when assessing the market value of a commercial property under construction, to use the income approach and to first determine the 'full' value as if the property was fully built out, based on any leases that have been executed. That total assessed value would then be pro-rated to reflect the stage of development

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completion in any given assessment year. In this case, it was not possible to perform such an analysis because the property owner did not cooperate by providing, through responses to ARFI requests, rental income and property operating costs that would exist in executed leases.

[43] The Respondent identified market value as representing the present worth of future benefits associated with ownership of property and interpreted s. 5 of *MRAT* to require that assessments must reflect the market condition of the entire bundle of rights associated with ownership of the fee simple estate. All influences, including lease commitments, municipal development and construction permits, attendant engineering and environmental feasibility studies, financing commitments, soft costs, and the like, add value to the land and need to be considered.

[44] The Respondent indicated suburban commercial land in this location was typically assessed at \$1,000,000/acre. This was validated by the subject's 2019 sale price as noted in the transfer of title documents at \$991,105/acre. The Transfer of Land is accompanied by an Affidavit re: Value of Land, which is a sworn affidavit indicating the present value of the land. The present value stated in the Affidavit defines value as meaning "the dollar amount that the land might be expected to realize if it were sold on the open market by a willing seller to a willing buyer" and land as "including buildings and all other improvements affixed to the land". This is very similar to the definition of market value found in the *MGA*. The Respondent indicated if any atypical influences affected the transaction resulting in a discrepancy between the consideration shown and the sworn value on this Affidavit, those influences would have to be explained.

[45] In addition, the Respondent identified the following influences that would have added value as having been completed for the subject by December 31, 2021.

- a. environmental impact studies;
- b. hazardous material testing;
- c. feasibility studies;
- d. site engineering fees and drawings were completed and approved;
- e. stripping and grading were completed;
- f. subdivision servicing agreement was in place;
- g. utilities permit was issued and permission was in place for construction;
- h. offsite levies of \$88,365/acre x 13.94 acres or \$1,228,273;
- i. deep services and surface improvements completed;
- j. site servicing construction completion certificate was issued;
- k. development permit plans completed December 22, 2020;
- l. development permit issued May 20, 2021;
- m. building permit application June 8, 2021;
- n. several building permits issued August 27, 2021 for 82,143 sf of total 150,452 sf;

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- o. pre-construction leasing was well underway as evident on the owner's website at September 30, 2021 confirmed the property will house Safeway and several other tenants;
- p. there was a lease registered against the title November 5, 2021;
- q. at October 7, 2021 the press was verifying Safeway as the confirmed anchor tenant along with shoppers drug mart, and others;
- r. by August 2022 the press was indicating the property was 70% leased, which equates to 105,000 sf;
- s. utility rights-of-way were completed;
- t. municipal development agreements;
- u. easements were completed;
- v. new financing was arranged;
- w. concept plans;
- x. building architectural and engineering services and fees;
- y. rough grading and piles;
- z. soil compacting;
- aa. financing fees;
- bb. appraisal and consulting fees;
- cc. interest cost accruing on interim financing;
- dd. property tax costs accruing on project;
- ee. project bonding and insurance;
- ff. advertising and marketing activity;
- gg. leasing and broker activity and fees;
- hh. accounting and legal services and fees;
- ii. accruing developer overhead; and
- jj. accruing developer profit.

[46] The Respondent questioned the validity of the comparables offered by the Complainant, concluding that none of the comparables had benefitted from these value enhancing attributes. This indicated that the subject could not reasonably be assessed as "land only" as of the condition date.

[47] Rather, the subject might be considered a "market unto itself". No commercial property in the municipality can be compared to it in relation to the scale of its proposed development, the age of any improvements, and the locational advantages offered by its proximity to Highway 2A as the major access point into and out of Town. There is insufficient and inadequate market data available to reflect the subject's characteristics in assessment calculations. The Respondent concluded it did not have the information required to use the income approach. It also indicated it is difficult to determine market value on a property that is under construction. In this case, the best alternative was to use costing information for the subject obtained from the 101 Northgate Blvd appeal.

[48] As noted in the discussion of the preliminary matter, an inequity with the original

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assessment for the subject had been brought to light in the 101 Northgate Blvd appeal. A “Project Summary – Standard Level 2 Pro-forma” indicating costs to date incurred for 10 D’Arcy Ranch Drive had been entered as evidence during that appeal. In the absence of sufficient or adequate market data, the Respondent based the amended assessment on the financial information in the Pro-forma. Under s. 525(1) of the *MGA*, the Pro-forma may be considered by the Board as proof, in the absence of evidence to the contrary, that the document was issued by the Corporation (i.e. the owner of 10 D’Arcy Ranch Drive), meaning the Respondent could also rely on its veracity to confirm development costs incurred to that date for the subject.

[49] The original 2021 assessed value of 10 D’Arcy Ranch Drive was \$14,800,000. The Pro-forma indicated the land purchase price for 10 D’Arcy Ranch Drive was \$13,852,078 (\$990,000/acre). After adjustment for costs of \$2,294,129 associated with partial site construction and development, the assessed land rate was effectively reduced to \$771,371/acre. In addition to the development and construction costs, this document identified marketing costs of \$29,617, leasing costs of \$69,383, financing costs of \$1,540,568, and net contra and carrying credits of \$795,800 for a total investment of 18,751,120 in the subject. Accordingly, the amended assessment reflected an assessed value for the subject of \$18,751,000 and remedied the inequity.

[50] The Respondent requested the Board to find the amended assessment to be correct, fair, and equitable. Given the inequity had been addressed, the assessment is now equitable. The Respondent reminded the Board that s. 467(3) of the *MGA* prohibits an assessment review board from altering any assessment that is fair and equitable.

Board’s Discussion and Findings

[51] The issue before the Board is to determine if the amended assessment of \$18,751,000 represents a fair and equitable representation of the market value of the subject on July 1, 2021, having regard for the condition of the property on December 31, 2021. In determining this issue, the Board was guided by the provisions in Part 9 of the *MGA* and the standards for the preparation of an assessment as identified in Part 1 of *MRAT*.

[52] To summarize the relevant provisions, s. 285 of the *MGA* stipulates a municipality must prepare an assessment for each property in the municipality annually. Property is defined in s. 284(1)(r) of the *MGA* as being a parcel of land and the improvements to it. Section 6 of *MRAT* identifies the valuation standard for assessment of a parcel of land and the improvements to it to be market value. Section 5 of *MRAT* identifies the characteristics of a market value assessment.

5. An assessment of property based on market value
 - (a) must be prepared using mass appraisal,

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- (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.

[53] Additionally, s. 3 of *MRAT* prescribes this amended assessment must be an estimate of the market value as of July 1 of the assessment year and s. 289 of the *MGA* prescribes it must reflect the characteristics and physical condition of the property on December 31 of the assessment year.

[54] The Respondent testified the amended assessment had been generated based on Pro-forma financial evidence presented by the Complainant in the 101 Northgate Blvd appeal, indicating the 2022 assessment of 10 D'Arcy Ranch Drive was inequitable. The Pro-forma reflected the purchase price of the subject, augmented by inputs for any construction, development, leasing, and financing having occurred by December 31, 2021.

[55] The Board finds this evidence was site-specific information assumed to have been generated by the owner of the subject (10 D'Arcy Ranch Drive). Rather than representing mass appraisal, the use of this data renders the assessment akin to the appraisal of a single property.

[56] The only indication that a typical market condition was used in the generation of the assessment was the testimony of the Respondent that the municipality used a base land value of \$1,000,000 for suburban commercial land. No evidence was provided to substantiate this. In fact, the Complainant characterized the comparables it introduced as suburban commercial land valued as land only and this was not disputed by the Respondent. The assessed per acre value for these comparables ranged between \$600,000 and \$900,000 with a median of \$848,000. This did not support the stated base land value of \$1,000,000.

[57] The Respondent contested the validity of the Complainant's comparables largely on the basis they were bare land properties without the value enhancing attributes the Respondent identified existed on the subject. The subject was characterized as being unique in the municipality based on the scale of the proposed development, the age of any improvements, and the locational advantages offered by its proximity to Highway 2A. The Respondent testified it was difficult to reflect the subject's characteristics in assessment calculations. The Board was persuaded by the Complainant's rebuttal regarding the relative comparability of these properties to the subject and concludes some comparative assessment information could have been provided once adjustments were made to account for the size, age, and location of the subject.

[58] The Respondent used the value identified on the transfer of title documents for the subject property as being the market value of the property, stating if any atypical

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influences affected the transaction, which might have altered this value from being market value, those influences would have to be explained between the consideration shown and the sworn value.

[59] The Complainant provided convincing evidence indicating this sale was not exposed to the open market and included a vendor take-back mortgage as well as a participation agreement on profits from a future sale of the property once developed. Further evidence indicated the sale price included items for which the purchaser was later reimbursed. The Complainant cast doubt on whether the Respondent had made any attempt to verify the sale was an arm's length sale or if the buyer had received a benefit or obligation other than the value of the real property. Based on this evidence, the Board concluded the sale price did not represent the market value of the subject when the transaction occurred.

[60] The Respondent produced no evidence to detail what improvements were included in the assessed development and construction costs or in any way substantiated this value reflected typical values for such improvements in the municipality. Additionally, by identifying a list of 37 attributes, the Respondent suggested the Pro-forma omitted pertinent activities that further added value to the subject site. The Board concludes if the Respondent feels the subject, on the condition date, reflects additional value that has not been captured in the amended assessment, then the amended assessment likely does not reflect a fair and equitable estimate of market value.

[61] The Complainant testified the Respondent had not requested any costing information for development and construction activities that had occurred on the subject as of the valuation date. This may have validated the Pro-forma information. To rebut the Pro-forma information, the Complainant provided costs for all construction and sitework having been undertaken as of December 31, 2021, and the Board finds this information more reliable than the Respondent's. Total expenditures for this work, which represented 6.9% completion, was \$631,395 less than the development and construction costs shown in the Pro-forma.

[62] The Board is satisfied the Complainant established doubt about the reliability of the amended assessment. Accordingly, the onus shifts to the Respondent to convince the Board the amended assessment fairly and equitably reflects market value, which the Respondent failed to do. The Board finds the amended assessment does not represent a fair and accurate estimate of the subject's market value on July 1, 2021, having regard for the condition of the property on December 31, 2021. It was not prepared using mass appraisal and does not reflect typical market values for similar properties in the municipality.

[63] With regard to the Complainant's requested assessed value of \$11,152,000, evidence presented clearly indicated site services had been installed and a small degree

COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/03/2022

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

| NO. | ITEM |
|------------|---|
| C-1 | Complainant's Disclosure (252 pages) |
| C-2 A | Complainant's Rebuttal - Part I of II (202 pages) |
| C-2 B | Complainant's Rebuttal - Part II of II (165 pages) |
| C-3 | Complainant's Rebuttal - Canadian Valuation Group Ltd. v. The City of Edmonton, 2020 ABECARB 2062 (16 pages) |
| C-4 | Complainant's Rebuttal - Citation 2020 ABCGYARB 2150066 (24 pages) |
| C-5 | Complainant's Rebuttal - A. Omoregie v. City of Calgary (8 pages) |
| C-6 | Email Cover for Preliminary Hearing (4 pages) |
| R-1 | Respondent's Disclosure (73 pages) (pages 1-34 contains jurisdictional issue; pages 35-73 contains merit hearing issue) |
| R-2 | Respondent's Disclosure - Reynolds Mirth Richards & Farmer Legal Argument (46 pages) and email cover page dated May 2, 2023 from Lawyer |

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.*