

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:

Siebel Construction Ltd. - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

E. Williams, Presiding Officer

D. Mullen, Board Member

R. Nix, Board Member

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

Roll Number	Address	Assessment
0076030	400, 200 Southridge Drive	\$8,333,000

This complaint was heard on the 27th day of June 2023 via video conference.

Appearing on behalf of the Complainant:

- R. Bloom, MNP LLP Property Tax Services
- G. Sharples, MNP LLP Property Tax Services

Appearing on behalf of the Respondent:

- C. Van Staden, Assessor, Town of Okotoks

Attending for the Assessment Review Board (ARB):

- P. Huber, Clerk, Town of Okotoks

COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/02/2023

Procedural Matters

1. The parties present at the hearing advised there was no objection to the Board's composition and the Board members advised they had no bias with respect to this file.

Background

2. The subject property is a three building retail shopping centre known as the BMO Bank Mall at 400 200 Southridge Dr. The subject has an area of 20,999 square foot (sf) on a 2.56-acre parcel of land. The BMO Bank Mall is part of the Westmount Centre. The assessment was prepared using the Direct Capitalization approach, also referred to as the Income Approach.

Issues

3. Requested Assessment: \$7,103,000.
4. The Complainant raised two issues:
 - a. Issue 1: Rental Rate. Should the assessed rental rate be reduced for the:
 - i. Retail Space from \$25.00 per sf to \$18.75 per sf; and
 - ii. Restaurant Space from \$32.00 per sf to \$25.00 per sf.
 - b. Issue 2: Assessable Area. Based on the rent roll for the subject property should the assessed area for Unit 401 be reduced from 6,650 sf to 6,645 sf and for Unit 441 from 1,219 sf to 1,200 sf.
5. This decision will present each of the two issues separately.

Position of the Parties

6. The Complainant and Respondent each presented substantial evidence varying in its relevancy. In the interests of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.
7. In respect of decisions of the Board, the Land and Property Rights Tribunal, and the Alberta Court of King's Bench, which were submitted as evidence in support of the parties' positions, it should be noted that those decisions were made in respect of issues and evidence that may be dissimilar to that before this Board.

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Issue 1: Rental Rate

Complainant's Position

8. The Complainant reviewed the current rent roll as presented in the following table:

UNIT	AREA	RENT START	FACE RENT*	ASSESSED RENT*
401	6,645 sf	May 2007	\$32.00	\$39.00
407	1,885 sf	Sept 2019	\$19.25	\$25.00
411	3,627 sf	VACANT		\$25.00
421	2,449 sf	Jan 2021	\$18.00	\$25.00
429	2,350 sf	May 2008	\$30.00	\$25.00
437	1,219 sf	June 2008	\$30.00	\$25.00
441	1,200 sf	May 2008	\$31.00	\$32.00
445	1,600 sf	Aug 2020	\$25.00	\$32.00

NOTE: FACE RENT* and ASSESSED RENT* - expressed as per sf

- a. Retail Space are Units 407 to 421 currently assessed at \$25.00 psf which should be reduced to \$18.75 psf. The best indicator of current rental rates for this space type are the lease start dates of Sept 2019 and Jan 2021 with lease rates of \$18.00 per sf and \$19.25 per sf.
 - b. Restaurant space is unit 445, currently assessed at \$32.00 per sf, which should be reduced to \$25.00 per sf. The best indicator of current rental rates for this space type is the lease start date of Aug 2020 with a lease rate of \$25.00 per sf.
9. Three of the current tenants have lease start dates of 2008 with lease rates of \$25.00 per sf and \$32.00 per sf, which are reflective of the original tenants when the shopping centre was leasing up and providing attractive tenant inducements. Currently the subject property's retail space is competing with adjacent developments that are providing more attractive lower lease rates.
10. It is worthy to note that the vacancy rate used in the Direct Capitalization approach to determine the assessment was 5.0%. This vacancy rate is not reflective of the subject property or the market. A study of vacancy rates in comparable properties in urban centres with a population profile similar to Okotoks determined the vacancy rates in the range of 8.27% to 19.85% with a median of 9.71%. The subject property has a current vacancy rate of 17.29%. Although the vacancy rate is not an issue, it is an indicator of the challenges experienced by the subject property which will impact rental rates.
11. In summary current leases in the subject property support the requested rental rates for the retail units of \$18.75 per sf and the restaurant units at \$25.00 per sf.

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Respondent's Position

12. The Respondent testified that the assessed retail rental rate is based on leases with commencement dates within the five-year period July 2017 to July 2022 with a focus on leasing in the immediate area of Southridge Drive, which includes addresses in the 200 to 600 block. This area is selected as the properties are very similar in profile.
13. In support of the Retail Lease Rates, the Respondent reviewed a representative sample of 10 leases with start dates from February 2020 to January 2022. The median of the sample was \$26.00 per sf, which supports the assessed rental rate of \$25.00 per sf.
14. In respect of the Restaurant rental rate, the \$32.00 per sf used in the preparation of the assessment was the median of current restaurant leases within the municipality. This is in contrast to the Complainant's use of a single lease from the subject property.
15. It was noted by the Respondent that the Complainant's request is based on three leases in their own property with no leases from comparable properties in the Okotoks market. The determination of the Net Operating Income is based on typical leases from the market not only the subject property.
16. In respect of the vacancy rate, it is acknowledged that the vacancy rate was not challenged, the Complainant's vacancy study of six properties include only one Okotoks property with the other five from urban centres geographically some distance and not comparable to the local market.

Complainant's Rebuttal

17. In respect of the Respondent's sample of 10 leases, supporting the assessed rental rate of \$25.00 per sf, the Complainant expressed two concerns. Firstly, the leases from the subject property were not in the sample. Secondly, insufficient details were provided on each lease, so it was impossible to determine comparability to the subject property.
18. A review of the Retail Leasing sample determined that the leases ranged from \$20.00 per sf to \$31.00 per sf, which are not comparable with the subject property where the two most recent leases are \$19.25 per sf and \$18.00 per sf.
19. The Respondent's restaurant rate of \$32.00 per sf lacked the support of a sample of leases.

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20. Based on the absence of an extensive sample and details on the leases that were provided, there is no alternative but to place little weight on the determination of the assessed rental rate.

Decision

21. Based on the evidence in respect of the issue of the rental rates the Board supports:
- a. Retail Unit Rental rate of \$25.00 per sf; and
 - b. Restaurant Unit Rental rate of \$32.00 per sf.
22. On that basis, the assessment is not revised.

Reasons

23. The Board's decision was based on the following findings:
- a. Minimum weight was placed on the Complainant's rental rate analysis regardless of whether it applied to the retail or the restaurant units as:
 - i. the leases were from the subject property; and
 - ii. there was a complete absence of market data from other retail shopping centres to support their request.
 - b. Although the Respondent's evidence may have lacked detail, the Complainant's rebuttal provided no compelling market basis to challenge the Respondent's evidence with the exception of reference to prior Board and Court decisions.

Issue 2: Unit areas

Complainant's Position

24. The Complainant reviewed with the Board the leasing profile for the subject property with attention to the leased area of units 401 and 441. The following table compares the actual leased area for each of these units and the areas used in the preparation of the assessment.

UNIT	COMPLAINANT RENT ROLL	RESPONDENT'S ASSESSED AREA
401	6,645 sf	6,650 sf
441	1,219 sf	1,200 sf

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25. The roll for the subject property should be corrected and recognized through an adjustment in the current assessment.

Respondent's Position

26. The Respondent completed a recalculation of the assessment based on the adjustments in the unit areas identified by the Complainant. Specifically, a decrease of 6,650 to 6,645 sf and 1,291 sf to 1,200 sf. The assessment changed from \$8,333,000 to \$8,322,000, a difference of \$11,000 which equates to a change of .013%. As the change in the assessment is less than 1.0% the assessment for the current year will not be revised. However, the areas will be altered for the subsequent assessment year.

Board Comment

27. In respect of the area of rental units, the Board understands that the Assessor advised that the units will be revised for the subsequent year's assessment.

Dated at the Town of Okotoks in the Province of Alberta this 27th day of July 2023.



E. Williams
Presiding Officer

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

NO.	ITEM
C-1 (150 pages)	Complainant's Disclosure
R-1 (97 pages)	Respondent's Disclosure
C-2 (97 pages)	Complainant's Rebuttal

LEGISLATION

MGA, RSA 2000, c M-26

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 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.

s 467(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.*

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.*