

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:

2162905 Alberta Ltd. - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

M. Weatherall, Presiding Officer

J. Gosse, 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	Street Address	Assessment
0002230	41 Elizabeth Street	\$1,919,000.00

This complaint was heard on the 26th day of July 2023 at the Okotoks Municipal Centre Council Chamber and by video conference.

Appearing on behalf of the Complainant:

- L. Watts, Property Tenant
- M. Watts, Property Tenant
- C. Bishop, Property Owner

Appearing on behalf of the Respondent:

- R. Beckner, Town of Okotoks Administrator
- C. Van Staden, Town of Okotoks Assessor

Attending for the Assessment Review Board (ARB):

- P. Huber, Clerk, Town of Okotoks

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Procedural Matters

1. The parties did not object to the composition of the Board.

Background

2. The subject property (subject) is a two-storey retail property with a zoning of "Downtown District". The subject year of construction is 1980 with a building area of 7,322 square feet (sf) and a land size of 11,733 sf.
3. For the current assessment year, the subject is assessed at \$1,919,000 or \$262.00 per sf pursuant to the direct comparison approach to value.

Issues

4. Is the current assessment of the subject reflective of market value and fair and equitable?

Complainant's Position

5. The Complainant provided the following background:
 - a. The subject previously sold for \$1,280,000 in February 2015.
 - b. The subject was assessed at \$1,272,000 in 2019.
 - c. Building improvements were \$220,000.
6. The Complainant requested a reduction of the subject assessment to \$1,500,000, which represents the purchase price agreed to in October 2020.
7. The Complainant argued that the increase in assessments since 2019 is not justified and not equitable.
8. The Complainant referred to building improvement permits, contractor invoices, and the addition of equipment for their business. The Complainant discussed the negative impact on their revenue from the COVID pandemic, noting that they had not fully recovered from this yet. They were advised by a Town assessor that they could seek a reduction in the subject assessment by pleading their dire circumstances.
9. The Complainant relied on the 2020 purchase agreement and acknowledged the purchase agreement has not been executed to date, although they expect to finalize the purchase in the near future. This sale should be considered a valid arm's length sale as the relationship between the seller (landlord) and buyer (tenant) is purely a business relationship and there was no need to engage a

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realtor.

10. In summary, the Complainant argued that two of the Respondent's sales comparables are post facto and little weight should be placed on these sales. The Complainant asserted that the 2020 purchase agreement in the amount of \$1,500,000 represents the actual market value for the subject and requested the Board to reduce the subject assessment to \$1,500,000.

Respondent's Position

11. The Complainant's request is based on historical information and not reflective of the current open market. Past assessments hold no significance in the current year assessment as legislation requires annual assessments to be based on the current market value on the valuation date at July 1 of that year.
12. The Respondent argued that the October 2020 Purchase Agreement has not been registered with Land Titles and even when registered would be considered a non-arm's length sale because it is a rent to own agreement and has not been exposed to the open market. Without details of the sale including the question of whether the agreement is for the sale, land, and improvements, the assessor cannot consider the sale price.
13. The Complainant's position regarding building improvement permits exclude a number of improvements to the subject, for example: the costs of the development permits for both patios in 2020 and 2022. The equipment costs have not been included in the assessed value as these are not typically affixed to the land. The Respondent argued that these permits indicate the subject has been significantly improved since 2019.
14. The Respondent relied on four sales to support the subject assessment:

Address	Property	Use	Sale Price Per SF	Sale Date
41 Elizabeth (subject)	Hubtown	Retail	\$1,919,000/7322 sf = \$262.09 per sf	N/A
49 Elizabeth	Sweet Grass	Retail	\$7,170,000/25740 sf = \$278.55 per sf	28/09/2022
105 Elizabeth	Remax	Retail	\$825,000/3110 sf = \$265.27 per sf	23/07/2019
50 Elizabeth	HiHo	Retail	\$1,390,000/3600 sf = \$386.11 per sf	28/11/2022
55 Riverside Gate	New Building	Retail	\$2,960,000/6308 sf = \$469.25 per sf	09/09/2021

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15. The Respondent stated these recent sales indicated an increasingly desirable area in the downtown district. All sales are similar to the subject in location and the subject assessment at \$262.09 per sf is below the range of the comparable sales between \$265.27 and \$469.25 per sf. The Respondent acknowledged that two of the sales are post facto to the subject value date and argued that the Board can give weight to post facto sales and, specifically, they are indicative of a market value trend.
16. In summary, the Respondent emphasized that assessments are for the building not the business operating within the building. The Respondent submitted that most weight be given to the sales comparables located at 50 Elizabeth and 105 Elizabeth as most similar to the subject with sale prices of \$386.11 per sf and \$265.27 per sf, respectively and support the subject assessment at \$262.09 per sf.
17. The Respondent requested the Board to confirm the subject assessment at \$1,919,000.

Decision

18. The Board makes no change to the current assessment of the subject.

Reasons

19. The Board determined that the valuation methodology employed in assessing the subject was fair and equitable and reflective of its market value. The estimate of market value was derived using the direct comparison approach to value. The Board notes that the Administrative Law and Assessment Training for Board Members states, in part, on Page 90:

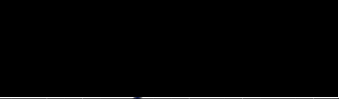
“The direct comparison approach is based on the principle of substitution, which states that a buyer will pay no more for a property than the cost of an equally desirable alternative property. Value is estimated by making direct comparisons of the subject property with similar properties that sold around the date of valuation.”
20. The Board acknowledges the Complainant’s concern with the subject assessments for previous years and understands that the issue of this merit appeal is for the year 2022. This decision deals with the market value of the subject at the valuation date of July 1, 2022. The Board recognizes that past assessments hold no significance on the determination of current assessments, which, in this case, is for the year 2022. The Board notes that Section 285 of the *MGA* states:

“Each municipality must prepare annually an assessment for each property in the municipality.”

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21. In review of the market sales comparables presented by the Respondent, the Board places less weight on the two sales located at 49 Elizabeth and 50 Elizabeth which are post facto to the July 1, 2022, valuation date, occurring on September 28, 2022, and November 28, 2022 respectively. Of the two remaining sales, the Board places most weight on the sale located at 105 Elizabeth. The Board finds that this sale is the best evidence of the market value for the subject on the valuation date. The Board is persuaded that this sale is most similar to the subject in location and retail use as its \$265.27 per sf sale price supports the subject assessment at \$262.09 per sf.
22. The Board places little weight on the Complainant's October 2020 purchase agreement. The Complainant acknowledged the sale has not been finalized as of the date of this merit hearing. The Board interprets the purchase agreement to mean that, as of October 2020, the proposed purchaser has a right to purchase to subject at the price of \$1,500,000. As the sale has not been finalized, the Board finds it is not necessary to make a determination on whether the sale is or would be considered an arm's length sale.
23. With respect to the Complainant's reference to the negative impact of the COVID pandemic on the business located in the subject property, the Board recognizes the hardship and negative impact of the COVID pandemic on businesses, including their business. The Complainant argued that the level of success for the business should be taken into consideration for the assessment of the subject. As mentioned above, the subject was assessed using the direct comparison approach to value rather than the income approach to value, which is based on the premise that income-producing properties are bought and sold on the basis of their income-earning potential. The Board finds there was no evidence presented to support this argument.
24. The Board finds that the Complainant did not provide sufficient and compelling evidence to persuade the Board to reduce the assessment to \$1,500,000.
25. The Board concludes that the current assessment is reflective of market value and is fair and equitable.

Dated at the Town of Okotoks in the Province of Alberta this 1st day of August 2023.



M. Weatherall
Presiding Officer

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

NO.	ITEM
C-1 (15 pages)	Complainant's Disclosure
R-1 (43 pages)	Respondent's Disclosure

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.*