

**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:**

Prairie Fire (Okotoks) GP Ltd - Complainant

- and -

Town of Okotoks - Respondent

**BEFORE:**

G. Sokolan, Presiding Officer

J. Gosse, Board Member

R. Pohl, 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:

<b>Roll Number</b>	<b>Address</b>	<b>Assessment</b>
0058275	300, 201 Southridge Drive	\$16,773,000

This complaint was heard on the 24<sup>th</sup> day of June 2024 via video conference.

Appearing on behalf of the Complainant:

- R. Bloom, MNP LLP

Appearing on behalf of the Respondent:

- C. Van Staden, Assessor
- R. Beckner (observer)

Attending for the Assessment Review Board:

- P. Huber, Clerk

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### **Procedural Matters**

- [1] The parties stated they had no objections to the composition of the Board.
- [2] The Respondent noted the Complainant had requested access to details of how the subject's assessment was calculated. The Respondent charges non-residential property owners a fee to access this information. At the direction of its client, the Complainant refused to pay this fee. As a result, the Respondent indicated it was not able to include a copy of the Assessed Income Approach Valuation for the subject in its disclosure. This resulted in no copy of the assessment detail sheets generated by the Respondent being present in either party's disclosure packages.
- [3] No other preliminary or procedural issues were raised and the Board proceeded to hear the merit arguments of the complaint.

### **Background**

- [4] The property under complaint is a 5.39 acre multi-occupancy retail property located at 700, 201 Southridge Drive in Okotoks known as Cornerstone Marks Work Warehouse. It is zoned General Use Commercial (C-G) and is improved with three buildings that were constructed in 2004, resulting in a site coverage of 21%.
- [5] The total 49,023 square feet (sf) of building space encompasses 17 retail bays broken down by use as follows:

<b>Use</b>	<b>Area (sf)</b>	<b>Rent Rate/sf</b>
Drive Through	1,521	\$45.00
Restaurant	6,190	\$31.00
Store >7500	9,386	\$22.00
Store <7500	31,131	\$25.00
Mezzanine	795	\$1.00

- [6] Operating costs were set at \$10/sf, the stabilized vacancy rate at 5% and the allowance for non-recoverable expenses at 2%.
- [7] The subject has been assessed using the Income Approach to valuation through direct capitalization at \$16,773,000, using a capitalization (CAP) rate of 6.5%.

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### Issues

- [8] Should the retail space greater than 5,000 sf (>5,000 sf) but less than 7,500 sf (<7,500 sf) be more appropriately assessed with a rent rate of \$20/sf?
- [9] Should the rent rate for the Starbucks be reduced to \$32.00?
- [10] Should the CAP rate be increased to 7.0% from 6.5%?

### Complainant's Position

- [11] The Complainant argued that the current assessment overvalues the subject due to increases to assessed rent rates and a decrease in the CAP rate.

### Assessed Rent Rates

- [12] The Complainant submits the threshold at which a "small" retail space is distinguished from a "large" retail space was changed between the 2023 and 2024 taxation years. Different typical assessed rent rates are applied to each category. The Complainant pointed to the subject's 2023 detailed assessment record, which indicated the threshold was 5,000 sf. Retail spaces below 5,000 sf (for example, Okotoks Eyeware at 4,620 sf and Cornerstone Dental at 1,884 sf) were assessed at \$25/sf, whereas both Reitmans (5,116 sf) and Mark's Work Wearhouse (9,386 sf) were assessed with a \$19/sf rent. In the 2024 taxation year, the Respondent indicated the threshold was 7,500 sf with typical rents of \$25/sf for small and \$20/sf for large retail spaces.
- [13] The Complainant indicated an equitable application of the higher rent rate of \$20/sf for large retail spaces would maintain the threshold at 5,000 sf. In this way, both Reitmans and Mark's Work Wearhouse would continue to be assessed as the same space type, but the increase in the typical rent rate would be applied.
- [14] Additionally, the Complainant noted the Starbucks at the subject has been assessed at \$45/sf this year categorized as a drive through fast food location. Prior years' assessments did not categorize this space separately. Last year it was assessed at \$32/sf, which was the rate applied to restaurants. The Complainant contended the Respondent provided no evidence that a separate category for drive through fast food spaces exists within the municipality or that if one does

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exist, it has been equitably applied. No market leases were produced to substantiate a \$45/sf rent rate for this space type. In the absence of this evidence, the Complainant requested the Starbucks continue to be assessed as a restaurant at a rate of \$32/sf.

- [15] The Complainant contended there has been no recent leasing within the subject that would support a change to the classification or typical market rents being applied. The Complainant provided a rent roll for the subject effective May 2, 2024. The most recent lease began at the end of December 2020, well before the current valuation date and none of the existing leases expire before the end of August 2024, which is well after the current valuation date.
- [16] Additionally, the Complainant submitted a table of leasing activity in Okotoks between June 2021 and May 2024 where leases range from \$10.15/sf to \$26/sf. These 13 leases were sourced from Co-Star the Complainant's market data provider and indicate first, that minimal leasing activity has taken place and second, these leases were executed at rates below assessed rental rates during this period. One photograph was provided indicating these leases occurred on a site that is inferior to the subject.
- [17] Using last year's detailed assessment record, the Complainant tried to reconcile the Respondent's current assessment by using the changes identified to the Income Approach parameters however was unable to do so. The Complainant's resulting assessment amount came to \$16,316,000 versus the Respondent's assessment of \$16,773,000, a difference of \$457,000 in favour of the Complainant.
- [18] As a result, the Complainant requested that Starbucks continue to be assessed as a restaurant at \$32/sf, and that Reitmans and Mark's Work Wearhouse be assessed at the rate of \$20/sf, which would reflect the threshold of 5,000 sf as the stratification point between small and large retail spaces.

### CAP Rate

- [19] The Complainant also requested the CAP rate decrease be reversed from 6.5% to the previous year's value of 7.0%.
- [20] The Complainant introduced an email from the property owner indicating a pending transfer of the shopping centre, which contains the subject. The shopping

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centre is comprised of three roll numbers: the current subject (Cornerstone, Marks Work Warehouse) at 300 Southridge Drive, 700 201 Southridge Drive (Cornerstone Sobeys), the property to the immediate north, and the property immediately to the west (Canadian Tire) at 100 Southridge Drive. The assessments for these three properties increased an average of 18.02% from the previous year.

- [21] The indicated transfer price is \$47,000,000, which is approximately 15% below the current combined assessments of \$53,922.00 and represents an approximate CAP rate of 7.3%. The transfer was not complete at the time disclosure documents were due, so it was not possible for the Complainant to include official sale documents. However, the Complainant contended the indicated sale price and resulting CAP rate were solid market evidence that an assessed CAP rate for the subject of 6.5% is aggressive and does not support the decrease in CAP rate in this year's assessment. The Complainant requested a market typical CAP rate similar to last year be applied to the subject.
- [22] In summary, the Complainant requested the Board amend the rent rates for Reitmans and Mark's Work Warehouse to \$20/sf, to code Starbucks as a restaurant assessed at \$32/sf, and to increase the CAP rate to 7%, for a total assessment of \$15,150,786, truncated to \$15,151,000.

### **Respondent's Position**

- [23] The Respondent argued the Complainant had submitted no evidence to support its claim that the subject is over assessed.

### **Assessed Rent Rates**

- [24] The Respondent indicated actual lease rates obtained from Assessment Request for Information (ARFI) responses from properties in the main commercial area of Town (excluding North Gateway and Downtown) over the past five years were analyzed and categorized by different space types, sorted by location, and where possible, by quality. Median lease rates in each category were used to derive typical assessed lease rates that were then used to generate individual property assessments.
- [25] The Respondent stated it does not disclose individual ARFI returns because some of the information they contain is confidential and disclosing it will impair the

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municipality's ability to collect similar information in the future. Further, the inclusion of property records as evidence substantiating comparability between properties has resulted in subsequent inappropriate use of this information once it is made public.

- [26] The lease analysis indicated:
- Rents for retail stores over 7,500 sf: there are 15 leases ranging from \$16/sf to \$33/sf. The median rent is \$22.25/sf.
    - Rents for retail space between 7,500 sf and 15,000 sf were reviewed for this hearing and the median rent is \$23/sf. As the rate is similar to the larger spaces, these were included in the larger space rents.
  - Rents for retail space under 7,500 sf: there are 58 current leases ranging from \$16/sf to \$39/sf. The median rent rate is \$28/sf.
  - Rents for drive through fast food locations: there are six (6) current leases ranging from \$37/sf to \$50.50/sf. The median rent rate is \$45/sf.
  - Rents for restaurant space: there are 14 current leases ranging from \$22/sf to \$39/sf. The median rent rate is \$31/sf.
- [27] The Respondent testified several errors were identified respecting the subject assessment. The median rent rate for restaurant space is \$31/sf, not \$32/sf.
- [28] The spaces occupied by Chopped Leaf and BarBurrito were coded incorrectly as retail spaces < 7,500 sf with a rent rate of \$28/sf. These establishments are restaurants and should be coded as fast food style restaurants at \$31/sf. The Respondent indicated if this was corrected, the total assessment for the subject will increase.
- [29] The Respondent stated the typical rent for retail spaces greater than 7,500 sf (>7,500 sf) is \$22/sf, as explained in the summary lease analysis noted above. This had been mistakenly verbally communicated to the Complainant as being \$20/sf.
- [30] The Respondent confirmed the Starbucks location is a drive through fast food location. It was coded as restaurant space at \$32/sf. Drive through fast food spaces are assessed at a typical rate of \$45/sf. In questioning, the Respondent stated this space type has existed for a number of years and the rent rate did not change from last year. The lease that the Starbucks is currently operating under would not have been considered in the six current leases for this space type as it had first been executed in 2004, outside of the five-year window used for lease analysis.

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- [31] The Respondent contended the Complainant is asking the Board to adjust only the rents that reduce the assessment. This would be inequitable with other properties in the jurisdiction. All errors should be corrected.
- [32] The Respondent provided an adjusted assessment calculation accounting for all the errors for a total assessment of \$17,468,000. The resulting change amounts to an approximate 4.4% increase over the current assessment of \$16,773,000. Since this increase is less than 5%, the Respondent recommended these corrections be incorporated for the 2025 taxation year.

### CAP Rate

- [33] The Respondent indicated it would not be appropriate to consider the evidence presented regarding the proposed sale of the shopping centre as an indicator of current market value. Not only has it not materialized and the sale details cannot be verified as being a valid market sale, it would have occurred post facto.
- [34] A sample of the sale of 15 non-residential properties that sold between February 1, 2022 and June 1, 2023 indicated a CAP rate that ranged from 4.8% to 6.8% with a median of 5.9%. The Respondent testified the median was adjusted upward to 6.5% during pre-roll consultations with the tax representatives, as this higher CAP rate did not impact compliance with the quality standard requirement for the overall assessment to sale ratio for the municipality. The Respondent noted that the Complainant was not present in these pre-roll consultations.
- [35] In summary, the Respondent asked the Board to decide the assessed value is correct at \$16,773,000 and confirm the assessment.

### **Rebuttal**

- [36] The Complainant requested the Board to place no weight on the summary of ARFI evidence provided by the Respondent, contending that no lease analysis studies outlining the actual lease data including property type, unit size, lease rate, lease start date or any verifiable data were presented to support the typical rent rates derived from the ARFI analysis.
- [37] The Complainant emphasized the Respondent failed to show how the subject assessment was actually derived because no hard copy documents of the

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assessment detail sheets were provided in the Respondent's disclosure. Even when using changes to 2024 rent rates and CAP rates communicated by the Respondent, the Complainant was unable to arrive at a market assessment that equates to the actual current assessment.

- [38] The Complainant continued to question the validity of a separate rent rate category for drive through fast food locations noting the prior year's assessment did not categorize this space separately nor did the Respondent provide market evidence to substantiate a typical rent of \$45/sf.
- [39] The Complainant did acknowledge the Chopped Leaf and BarBurrito are, in fact, fast food restaurants and should be assessed as such at \$32/sf.
- [40] When completing its Assessment Review Board Complaint form, the Complainant stated, under Section 5 - Reasons for Complaint, that the Respondent's assessment does not comply with the Valuation Standard – *MGA* sections 1(1), (n), 289 (2), *MRAT* sections 7(1), (2), (3), (4), (5), 8(1), (2), (3), 9(1), (2), (3), (4), as follows:

“Due to the incorrect analysis of the characteristics and physical condition of the subject property relative to other properties deemed comparable by the municipality and the incorrect application of the valuation procedures, the assessment amount of the subject property is greater than the valuation standard of market value for assessment purposes.” (Point 2(d), page 2 of Exhibit 2)

- [41] The Respondent countered this statement indicating, “Equity must be maintained between properties both within property groups and across the municipality. Altering assessments without considering these factors can result in some properties being favoured with respect to their tax burden” (page 10, Exhibit R-1). The Respondent also cited section 467(3)(c) of the *MGA* which states assessment review boards must not alter any assessment that is fair and equitable, taking into consideration the assessments of similar property or business in the same municipality.
- [42] In rebuttal, the Complainant referenced paragraph 22 of *Mountain View County v. Alberta (Municipal Government Board)*, 2000ABQB 594 which references *Bramalea Ltd. British Columbia (Assessor of Area #09-Vancouver)*, 1990)76 D.L.R. (4th)53: “... Where the Board is of the view that the assessed value of property under appeal is

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too high, and cannot reasonably be regarded as at "actual value", then it ought to reduce an assessment that is too high, even though it cannot reduce the assessments of similar properties which are not the subject of the appeal. In this way, the Board will have done what it can, in the light of its limited power; it will have enforced the rights of the taxpayer before it".

- [43] In summary, the Complainant continued to request a total assessment of \$15,151,000. However, if the Board disagreed with its argument that the CAP rate reduction should be reversed and a rate of 7.00% be applied, the Complainant requested the Board consider an assessment of \$16,638,800. This figure reflects a reduced rent rate of \$20/sf for retail space between 5,000 and 7,500 sf in size, and the Starbucks continuing to be assessed as a restaurant at \$32/ft.

### **Decision**

- [44] For the reasons outlined below, the assessment of the subject remains unchanged, at \$16,773,000.

### **Reasons**

- [45] At the outset of its presentation, the Respondent took time to review the legislative and professional obligations it faces in preparing assessments that will meet provincial audit standards and the qualifications of a designated assessor under the legislation. The Board noted the importance of these obligations and qualifications in coming to a fair and equitable estimate of the market value of a property. The Board is also aware of the role it plays in identifying and remedying any circumstances particular to an individual property that might render its assessment either unfair or inequitable.
- [46] The Board was disadvantaged by the lack of evidence presented by both parties. As noted, a copy of the assessment detail sheets generated by the Respondent was not included in either party's disclosure packages. Without this evidence, the Board was unable to verify the actual rental rates used for the subject.
- [47] Much of the Respondent's evidence was summarized from ARFI returns, which were not themselves disclosed. The Board understood the Respondent's reluctance to provide confidential details within the ARFIs however, the failure to provide additional detail makes it difficult for the Board to assess the comparability of the

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properties from which the evidence was summarized or its relevance to the subject. Further, it would not be procedurally fair to rely on information that has been disclosed without sufficient details for the Complainant to fully understand and respond to it (see *Nortel Networks Inc. v. Calgary (City)*, 2008 ABCA 370). In this respect, the Board notes in some cases it may be possible for the Respondent to disclose additional support for its rental analysis without reference to confidential details in the ARFIs. However, if this is not possible, section 464.1 of the *MGA* authorizes measures to preserve the confidentiality of information disclosed for the purpose of a hearing, which the Respondent had the option to request.

- [48] The Respondent identified mistakes that were made in the coding or classification of individual retail spaces within the subject. Additionally, the Respondent referred to pre-roll negotiations that resulted in deviations made from the application of typically derived CAP rates. The Complainant acknowledged it was not involved in these pre-roll discussions and the Board recognized this as being beyond the control of the Respondent.
- [49] The Complainant provided the previous year's assessment details, a recent rent roll from the subject, and recent leasing information from a third party as market evidence related to the leasing of the subject. The Complainant failed to produce any comparative evidence that the subject itself, or the individual contested retail spaces, were over assessed or inequitably treated.
- [50] Using changes to the income valuation parameters identified by the Respondent and the template provided by the detailed 2023 assessment of the subject, the Complainant was unable to reconstruct the Respondent's assessed value of \$16,773,000 for the 2024 taxation year. These parameters involved both typical rent rates applied to retail spaces within the subject, as well as the applicable CAP rate. The Board noted no changes were made to values assigned to operating costs, stabilized vacancy rates, or non-recoverable expenses between the two assessment years.

### Assessed Rent Rates

- [51] It appeared the Complainant was surprised by the Respondent's apparent change to the stratification threshold between small and large retail spaces, but the Board noted it is the Respondent's prerogative to make such changes. In defense of the change, the Respondent should be able to provide market evidence that supports

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the change and illustrates it has been applied equitably amongst other similar retail properties. The Board noted the Respondent failed to provide such evidence, outside of the summarized lease analysis from returned ARFI requests. Without this more specific comparative market evidence, the Board was not able to determine if the subject was treated equitably.

- [52] In the absence of such evidence, in this case the Board found it more equitable to apply an assessed rent rate to retail space between 5,001 and 7,500 sf that matches the rate applied to the newly defined 7,500 to 15,000 sf category in this space type. Although the Respondent identified this rate as \$22/sf based on the ARFI lease analysis, they mistakenly communicated this rate to be \$20/sf to the Complainant.
- [53] Again, the Board found the Respondent failed to produce market evidence that would substantiate the \$22/sf rate. In addition, the Respondent testified it believed the Reitmans space may have been incorrectly classified. Accordingly, specific to this case, the Board found the Reitmans space at 5,116 sf, is more equitably assessed at \$20/sf.
- [54] Additionally, for the same reasons, the Board found the single retail space between 7,500 and 15,000 sf (Mark's Work Warehouse) should be assessed at \$20/sf for this year.
- [55] The Board found the Respondent failed to produce market evidence showing the "drive through fast food location" space type with a typical rent of \$45/sf was equitably applied elsewhere in the municipality. The previous year's assessment had shown the Starbucks tenant was considered to be a restaurant and was assessed at a rate of \$32/sf. The Board may have been persuaded this was a coding error by the Respondent if such market evidence had been supplied. In its absence, the Board found it more equitable to continue to assess this retail space as a restaurant in the 2023 assessment, at a rent rate of \$32 /sf.
- [56] From the Respondent's testimony, the Board noted a number of mistakes were made in properly categorizing existing leases at the subject property, resulting in a discrepancy between the applied and typical assessed rent rates. Restaurants were assessed at \$32/sf versus the typical \$31/sf. Two restaurants were miscoded. The Chopped Leaf and BarBurrito are really fast food style restaurants, yet were classified as retail space >7,500 sf with an assessed rent of \$25/sf. The Board noted the Complainant, in rebuttal, accepted these two retail spaces should be

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assessed at a rate of \$32/sf.

- [57] As these mistakes were not challenged by the Complainant, the Board found, with the exception of the rent rate for the Chopped Leaf and BarBurrito, that they should be corrected in the upcoming assessment year. For this assessment, these two restaurants will be assessed as restaurants at \$32/sf. The other two restaurants, Quiznos and Dominos Pizza, will continue to be assessed at \$32/sf.

### CAP Rate

- [58] The Board found it inappropriate to consider the evidence of anticipated transfer of the subject in coming to a decision regarding the Complainant's request to raise the CAP rate to 7%. While the Board found this sale could reflect market conditions during the 2025 taxation year, it was not finalized as of the valuation date. No details of the transfer could be substantiated and, even if it had been finalized, it would have been post facto to the valuation date.
- [59] The Board accepted the CAP rate analysis provided by the Respondent and saw no need to adjust the CAP for this assessment.

### Summary

- [60] To address the Complainant's concerns in an equitable way, the Board identified the following changes to the assessment:
- Retail space between 5,001 and 7,500 sf (Reitmans) is assessed at \$20/sf;
  - Retail space >7,500 sf (Mark's Work Wearhouse) is assessed at \$20/sf; and
  - Starbucks continues to be assessed as a restaurant at \$32/sf.
- [61] These changes result in a total assessment of \$16,638,171 truncated to \$16,638,000. The difference between the Respondent's assessment and this altered assessment is \$135,000 or 0.8%, which the Board found to be insignificant to the overall assessment and does not warrant a change to the Respondent's assessment. The assessment remains unchanged at \$16,773,000.

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Dated at the Town of Okotoks in the Province of Alberta this 24<sup>th</sup> day of July 2024.

---Original Signed---

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G. Sokolan  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>	
1	Notice of Hearing	2 pages
2	300, 201 Southridge Drive Complaint Form	3 pages
C-1 (26 pages)	Complainant's Disclosure	26 pages
R-1 (46 pages)	Respondent's Disclosure	46 pages
C-2 (10 pages)	Complainant's Rebuttal	10 pages

**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*

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- (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.*