

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:

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:

Roll Number	Address	Assessment
0061300	700, 201 Southridge Drive	\$21,907,000

This complaint was heard on the 24th 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 (ARB):

- P. Huber, Clerk

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Procedural/Preliminary Matters

- [1] The parties stated they had no objections to the composition of the Board.
- [2] The Complainant requested all testimony, questions, and summary comments regarding the capitalization (CAP) rate and the pending transfer of the subject property be carried forward to this file from Roll Number 0078575. Additionally, the Complainant requested all testimony questions and summary comments regarding its response to equity comments on pages 10 and 15 of the Respondent's disclosure (Exhibit R-1) be carried forward from Roll Number 0058275.
- [3] The Respondent requested all testimony and questions related to material found on pages five (5) through 16 of Exhibit R-1 be carried forward from Roll Number 0058275, which included:
 - Proceedings before Assessment Review Boards;
 - Possible Grounds for Complaint; and
 - Assessment Fairness and Equity.
- [4] The Respondent also requested its summary comments be carried forward from Roll Number 0058275.
- [5] The Board agreed with these requests.
- [6] The Respondent noted the Complainant had requested access to details of how the subject property'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.
- [7] No other preliminary or procedural issues were raised; the Board proceeded to hear the merit arguments of the complaint.

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Background

- [8] The property under complaint (subject) is a 6.10 acre multi-occupancy retail property located at 700, 201 Southridge Drive in Okotoks, known as Cornerstone Sobeys. It is zoned General Use Commercial (C-G) and is improved with three buildings that were constructed in 2003, resulting in a site coverage of 22%.
- [9] One 6,100 square feet (sf) building houses a stand-alone bank; another 48,852 sf building houses a Sobeys grocery store, including 2,515 sf of mezzanine space, and a Sobeys liquor store. The Sobeys grocery store is categorized as retail space >7,500 sf. The third building houses the remaining five tenants, including 6,163 sf of dine in/take out restaurants and 3,627 sf of retail bays categorized as retail space <7500 sf in size.
- [10] Operating costs were set at \$10/sf, the stabilized vacancy rate at 5% and the allowance for non-recoverable expenses at 2%.
- [11] The subject has been assessed using the Income Approach to valuation through direct capitalization at \$21,907,000, using a CAP rate of 6.5%.

Issues

- [12] Is the Sobeys grocery store over assessed at a typical rent rate of \$22/sf?
- [13] Should the CAP rate be increased to 7% from 6.5%?

Complainant's Position

- [14] The Complainant argued the current assessment over values the subject due to increases to assessed rent rates and a decrease in the CAP rate.

Assessed Rent Rates

- [15] Working from last year's detailed assessment record, the Complainant recreated this year's breakdown using rent rates for "Store >7500" as it relates to the Sobeys grocery store and "Bank" (the Bank of Nova Scotia) received verbally from the Respondent.

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- [16] The rent rate for the Sobeys store increased by \$5/sf, going from \$17/sf to \$22/sf, and the rate for the Bank of Nova Scotia increased by \$2/sf, going from \$38/sf to \$40/sf.
- [17] The Complainant noted that a new grocery store, Safeway located in the D'Arcy Crossing shopping centre, had opened prior to the valuation date. The Complainant speculated the inclusion of this property in the analysis had led to the increase in grocery store rent rates. The Complainant argued this store is not comparable with the subject and the \$22/sf rent rate, applied to both stores, is inequitable.
- [18] The Complainant noted other municipalities, such as Calgary and Airdrie, separate properties by quality/age for market purposes, resulting in different typical rent rates within a single space type.
- [19] The Complainant introduced the subject's rent roll as of May 2024 showing a rent rate for Sobeys of \$18.25/sf. The lease between Sobeys and the owner was originally negotiated in 2004 at \$14.25/sf with step-up increases after each five (5) years for a total 20-year term. The lease document, which the Complainant also provided as evidence, provides an option for the tenant to renew the lease on similar conditions for an additional six, five (5)-year periods at the end of 20-years, taking the lease to 2048.
- [20] At the valuation date the grocery store was leasing for \$17.25/sf, which according to the lease represented the market rent at that time. The lease was renewed in February 2024 at a rate of \$18.75/sf for the period 2024 to 2029.
- [21] The Complainant argued the renewal rate of \$18.25/sf, although enacted post facto, is the best representation of market value available to the Board and requests the assessment be amended to reflect this rate.

CAP Rate

- [22] The Complainant also requested the CAP rate decrease be reversed from 6.5% to the previous year's value of 7.0%.
- [23] 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 Sobeys) at 700, 201 Southridge Drive, the property to the immediate north (Cornerstone, Marks Work Warehouse) at 300 Southridge Drive, 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.

- [24] The indicated transfer price is \$47,000,000, which is approximately 15% below the current combined assessments of \$53,922 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 that the indicated sale price and resulting CAP rate are solid market evidence that an assessed CAP rate for the subject of 6.5% is excessive 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.
- [25] In summary, the Complainant requested the Board to amend the subject assessment to reflect a 7% CAP rate and by reducing the assessed rent rate of the Sobeys store to reflect the renewed lease rate of \$18.25/sf, for a total assessment of \$18,205,000.

Respondent's Position

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

Assessed Rent Rates

- [27] The Respondent indicated actual lease rates obtained from Assessment Request for Information (ARFI) responses received from properties in the main commercial area of the 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.
- [28] 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.

[29] The 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; the median rent is \$23.00/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 to \$39/sf. The median rent rate is \$28.00/sf.
- Rents for banks: there are six (6) current leases ranging from \$37/sf to \$44/sf. The median rent rate is \$40.00/sf.
- Rents for restaurant space: there are 14 current leases ranging from \$22 to \$39/sf. The median rent rate is \$31.00/sf.

[30] The Respondent testified an error was identified respecting the subject assessment. The median rent rate for restaurant space is \$31/sf, not \$32/sf. The Respondent provided an adjusted assessment calculation correcting this error, which reflected an assessed value of \$21,819,000, noting the difference between this and the current assessment was a minuscule downward correction. The Respondent suggested this error be left and rectified in the 2024 assessment.

[31] The two available lease rates for grocery stores were determined to be insufficient to define a proper rent rate for that space type and grocery store space was subsumed into the category of retail space > 7,500 sf in size at a rate of \$22/sf. The Respondent testified three or four grocery stores had been assessed at \$20/sf but this had been done in error.

[32] The Respondent testified the median of the two current grocery store leases was \$22.25/sf. The current lease for the subject was negotiated in 2004, outside the five year window used for rent rate analysis and therefore was not considered. Similarly, the newly negotiated lease for the subject is considered post facto, having come into effect in February 2024, after the valuation date. The Respondent further testified the inclusion of either of these leases in the calculations would only marginally affect the median rent calculations and the resulting typical lease rate

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would not fall below \$22/sf.

- [33] Through questioning the Respondent identified the Safeway in D'Arcy Crossing was assessed at a rent rate of \$22/sf. However, D'Arcy Crossing shopping centre is considered to be different from the balance of the retail areas in Town. It is newly constructed and benefits from high traffic exposure due to its location at the northern gateway to Okotoks. For these reasons, the site is assessed on its own and rents rates are set to reflect the median of leases located specifically within this site. Additionally, this site has been assessed with a lower CAP rate than other retail areas in Okotoks to account for its superiority. The \$22/sf rent rate assigned to the Safeway did not influence the typical rate used to calculate the subject's assessment.

CAP Rate

- [34] 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.
- [35] 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 notes that the Complainant was not present in these pre-roll consultations.
- [36] In summary, the Respondent asked the Board to decide the assessed value is correct at \$21,907,000 and confirm the assessment.

Rebuttal

- [37] 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.

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- [38] The Complainant emphasized the Respondent did not provide any comparable evidence to show how a typical rent rate of \$22/sf had been applied to other grocery stores in the municipality. Consequently, the Complainant contends it is not possible to conclude the new Safeway at D'Arcy Crossing was not included in the analysis and that the Sobeys at the subject was not compared to a newly constructed building. The question of inequity remains unresolved.
- [39] 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* 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)
- [40] 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.
- [41] In rebuttal, the Complainant referenced paragraph 22 of *Mountain View County v. Alberta (Municipal Government Board)*, 2000ABQB 594 which references paragraph *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 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”.

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- [42] In summary, the Complainant requested the Board to amend the subject assessment to reflect a 7% CAP rate and by reducing the assessed rent rate of the Sobeys store to reflect the renewed lease rate of \$18.25/sf, for a total assessment of \$18,205,000.
- [43] If the Board does not agree with the revision to the CAP rate, the Complainant asked the Board to recognize the inequity of a \$22/sf rent rate for the Sobeys store and reduce it to reflect the renewed lease rate of \$18.25/sf for a total assessment of \$19,606,000.

Decision

- [44] For the reasons identified below, the assessment is reduced to \$20,555,547.

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 unequitable.
- [46] The Board was compromised 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. That said, the Complainant was able to arrive at the same assessed value as the Respondent by altering last year's assessed rent rates for the bank and the grocery store and the CAP rate following discussions with the Respondent. 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.
- [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 noted 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 units within the subject. Additionally, the Respondent referred to pre-roll negotiations that resulted in deviations made from the application of typically derived assessed rental rates or CAP rates. The Complainant acknowledged it was not involved in these pre-roll discussions; the Board recognized this as being beyond the control of the Respondent.
- [49] The Board noted no comparative market evidence was provided by the Complainant to substantiate its claim the subject property is over assessed. The Complainant provided the previous year's assessment details, a recent rent roll from the subject, and a copy of the original subject property lease, which expired in February 2024.

Assessed Rent Rates

- [50] The evidentiary documents produced by the Complainant showed the actual lease rate of the Sobeys is less than the assessed rent, but no evidence was presented to show this typical rent rate was applied inequitably to the Sobeys.
- [51] The Board understood the Respondent used a five-year window to determine relevancy of any leasing information when determining typical assessed ease rates by space type. From the testimony provided, it seems neither the Sobeys lease as of the valuation date for \$17.25 (which was a step-up rate from when the lease was originally negotiated in 2004) nor the post facto renewal of the lease at \$18.25/sf were considered in the analysis of grocery store leases. However, the Respondent stated that had either of these leases been considered, they would have only marginally affected the lease calculations and the resulting typical lease rate would

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not fall below \$22/sf. No evidence was provided to substantiate this statement.

- [52] The Board gave weight to the testimony that the newly constructed Safeway located in D'Arcy Crossing was assessed with a \$22/sf rent rate, noting only testimonial evidence was given to substantiate the use of a separate lease analysis for the properties at the D'Arcy Crossing shopping centre.
- [53] As well, the Board gave weight to the testimony that three or four grocery stores had been incorrectly assessed at a rent rate of \$20/sf. The Board also gave some weight to the Complainant's suggestion that differing quality and age of similarly sized retail spaces could be addressed by creating more than one category of that space type with differing typical rents to reflect differences in age and quality of the improvements.
- [54] Given testimony that grocery stores were included in the same space type of retail space >7,500 sf, the Board determined that two categories of this type of space were used in last year's assessment. The Board found it more equitable to reduce the rent rate for this category to \$20/sf for the subject assessment.
- [55] In doing this, the Board noted the Bank of Nova Scotia falls into this size category but acknowledged the Respondent treats banks as a separate space type. This adjustment to the subject assessment will not affect the rent applied to the bank. The Board also noted the Complainant did not take issue with the increased rent rate for the bank.
- [56] The Board acknowledged that restaurants at the subject were mistakenly over assessed by \$1/sf. As this mistake was not challenged by the Complainant, and the adjusted assessment prepared by the Respondent indicated that, if corrected, this error would result in a reduction of just 0.4% (\$88,000) to the subject's total assessment, the Board found this rent rate should be corrected in the 2024 assessment year. Accordingly, for this complaint, the Board found restaurant spaces should be assessed at the rate of \$32/sf.

CAP Rate

- [57] 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

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during the 2024 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.

[58] The Board accepted the CAP rate analysis provided by the Respondent and saw no need to adjust the CAP rate for this assessment.

Summary

[59] The Board reduces the rent rate for retail space >7,500 sf to \$20/sf. The CAP rate remains at 6.5%. The resulting amended assessment is \$20,555,547 truncated to \$20,555,000.

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

---Original Signed---

G. Sokolan
Presiding Officer

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

NO.	ITEM
C-1 (31 pages)	Complainant's Disclosure
R-1 (46 pages)	Respondent's Disclosure
C-2 (11 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*

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- (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.*