

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:

Riotrin Properties (Okotoks) Inc. - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

G. Sokolan, Presiding Officer
L. Dunbar-Proctor, Board Member
A. Eastham, 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
0095480	105 Southbank Blvd.	\$28,138,000

This complaint was heard on the 8th day of July 2024 via video conference.

Appearing on behalf of the Complainant:

- B. Foden, Altus Group Limited

Appearing on behalf of the Respondent:

- C. Van Staden, Assessor

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Procedural Matters

- [1] The parties raised no objections to the Board panel as it was constituted.
- [2] The parties requested that the Board carry forward all testimony, argument, questions, rebuttal, and summary from Roll #0106790. The Board agreed to these requests.
- [3] No further procedural or preliminary matters were raised. The Board proceeded to hear the merit arguments of the complaint.

Background

- [4] The property under complaint (subject) is an 8.66 acre multi-occupancy retail parcel located at 105 Southbank Blvd. It is zoned General Use Commercial District. It is improved with three (3) buildings constructed in 2010, resulting in 105,890 square feet (sf) of assessable space and a 28% site coverage.
- [5] The three (3) buildings are divided into 19 retail spaces: three (3) are assessed as retail spaces >7,500 sf, totaling 51,692 sf, at \$20/sf. 15 are assessed as retail space <7,500 sf, totaling 39,205 sf. All but two (2) of these are assessed at \$25/sf; one is assessed at \$22/sf and one at \$32/sf. Finally, three (3) spaces totaling 51,692 sf are assessed at \$1/sf; one (1) is mezzanine space (1554 sf), and two (2) are businesses which occupy parking lot or storage space (13,429 sf).
- [6] The subject is assessed for \$28,137,803 using the Income Approach to valuation.

Issues

- [7] Would the market value of the subject be more reasonably reflected if the three (3) retail spaces >7,500 sf at the subject were assessed at \$16/sf, based on the median value of their current lease agreements?

Complainant's Position

- [8] The Complainant argues the assessed rent of \$20/sf for these three (3) spaces over-states their market value. The spaces occupied by Winners Apparel (Winners) and Michaels Arts & Crafts (Michaels) are operating under leases that generate

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\$16/sf, executed in April 2022 and May 2021 respectively. Dollarama has a lease for \$18/sf that was executed in February 2021.

- [9] The Complainant noted the Altus Group Secondary Market Leasing Database had been used to research any other recent leasing activity in the retail space >7,500 sf space type within the municipality. It found no other leases than the three (3) properties under complaint.
- [10] Based on the median of these leases, the Complainant requests the Board to reduce the assessed rent to \$16/sf for a total assessment of \$25,177,248. The Complainant submitted the subject's 2024 property record and its rent roll, current as of June 01, 2023, as well as exterior photos of each space in support of its request.

Respondent's Position

- [11] The Respondent argued the subject assessment at \$28,137,000 is correct and the rents applied to individual retail spaces reflect the typical rents derived from a lease rate analysis conducted to derive typical rent rates for the variety of space types found within the municipality.
- [12] The lease analysis looked at 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 (5) years. The leases 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 for each space type. The Respondent testified a five (5) year window, rather than shorter window, was used for the analysis due to a lack of activity and to account for leasing activity that occurred during Covid, which generally had the effect of reducing rent rates.
- [13] The Respondent stated it does not disclose individual ARFI returns because some of the information they contain is confidential and disclosing it would impair the municipality's ability to collect similar information in the future.
- [14] The three (3) leases addressed in this complaint fall within the space type of retail spaces >7,500 sf. A total of 15 current leases were reviewed for this space type, ranging from \$16 to \$33/sf. The leases under complaint were included in the 15

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leases. The analysis provided a median rate of \$22.25/sf.

- [15] Rents for retail spaces between 7,500 and 15,000 sf were isolated from this larger group and examined for the hearing. The median rent in this size range was \$23/sf and, as this rate is similar to the larger range, retail space between 7,500 and 15,000 sf was not identified as a separate space type. These leases were included in the larger category of retail spaces >7,500 sf where rents had a median of \$22/sf. This space type at the subject was assessed at \$20/sf.
- [16] The Respondent notes all three (3) of the contended leases were first contracted in 2011 and 2012 when the shopping centre was newly built. They were renewed in 2021 and 2022, when the fallout of Covid resulted in leases being renewed at more favourable rates. Since then, lease rates have been increasing. The subject's current rent roll indicates nine (9) of the tenant leases have been commenced or renewed since February 2021 with a median value of \$26/sf. which is above the 2023 assessment year typical rate for spaces either <7,500 sf or spaces >7,500 sf.
- [17] The Respondent noted there are two (2) other leases for retail space >7,500 sf in the adjacent retail shopping area at 100 Southbank Centre, which is also owned and operated by Rio Can. The Complainant did not consider these leases in its analysis.

Rebuttal

- [18] The Complainant argued the Respondent had not provided sufficient information to allow the Complainant to respond to, or rebut, the typical rent rate that had been established for space types. As a result, it was impossible to determine comparability or relevance of any leasing information brought forward by the Respondent and from which the typical market rent rates for various space types had been derived.
- [19] The Complainant cited the Respondent's disclosure requirements as stated in section (9)(2)(b) of *Matters Relating to Assessment Complaints Regulation 2018 (MRAC)*, arguing it is a requirement and not an option that the Respondent provide "any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearings".

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- [20] The Complainant pointed to s. 464.1(5) of the *MGA* which allows the Board to exclude a document from the public record if it could reasonably be expected to disclose financial or commercial matters, noting the Respondent had not availed itself of this opportunity.
- [21] The Complainant referred the Board to Court cases where the sufficiency of evidence had been reviewed (*Canada Safeway Ltd. v. Calgary (City)*, 2016 ABQB 200; *Jaroc Holdings Ltd. v. Calgary (City)*, 2018 ABQB 969; and *Nortel Networks Inc. v. City of Calgary*, 2008 ABCA 310).
- [22] The Complainant questioned the relevance, in an assessment complaint hearing, of the emphasis the Respondent had placed on the use of mass appraisal or the need for the municipality to meet the provincial audit standards. It requested the Board put little weight on these arguments, noting the objective of the hearing is to determine if the assessment of the subject reflected its fair market value. The Complainant suggested if the Board were to rely on these concepts, it could be seen to be fettering its discretion. Relative to this point, the Complainant referred the Board to *Costco Wholesale Canada Ltd. v. City of Medicine Hat*, 2022 ABQB 129 and *Cidex Developments Ltd v. Calgary (City)*, 2018 ABQB 519.

Decision

- [23] The current assessment remains unchanged at \$28,138,000.

Reasons

- [24] 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 notes 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 Board's role in identifying and remedying any circumstances particular to an individual property that might render its assessment to be either an unfair or inequitable estimate of market value.
- [25] The Board notes much of the Respondent's evidence was summarized from ARFI returns, which were not themselves disclosed. The Board understands the Respondent's reluctance to provide confidential details within the ARFIs; however,

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the failure to provide additional detail makes it difficult for the Board to assess the comparability of the 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). As a result, the Board placed less weight on this evidence.

- [26] 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, s. 464.1 authorizes measures to preserve the confidentiality of information disclosed for the purpose of a hearing, which the Respondent had the option to request.
- [27] In this complaint, the Board is tasked with determining if the subject's current assessment is a fair representation of its market value. The Complainant argues this is not the case, as three (3) leases in the >7,500 sf space type seem to be over-assessed when compared to the rate at which they were renewed in 2021 and 2022.
- [28] The Board notes the Complainant's testimony that these three (3) leases represent the only recent comparable leases in in the municipality, i.e. retail spaces that are >7,500 sf. The Respondent spoke of two (2) leases in this space category at 100 Southbank Blvd, which lies immediately to the northwest of the subject that were assessed at \$21 and \$22/sf. The Board learned in the hearing for Roll #0106790, from which all testimony, argument, questions, rebuttal, and summary statements were carried forward to this complaint, that these leases for Sport Chek and Goodlife Fitness are dated and were not included in the Respondent's lease analysis. The Board takes this to mean these leases were executed more than five (5) years ago and do not represent a good indication of current market value.
- [29] The Board gave substantial weight to another six (6) leases identified in the subject's rent roll that commenced or had been renewed in the last five (5) years, noting the lease information and the rent roll supplied by the Complainant provided the only market evidence provided to the Board.
- [30] These leases were executed between June 2021 and April 2023 and all fall within the space type of retail space <7,500 sf, for which the typical rent has been calculated at \$25/sf. The median of these six (6) leases is \$31.50/sf, indicating these

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retail spaces are over-performing relative to the typical rent derived for this space type.

- [31] As the Respondent noted, when all leases in the subject that commenced or were renewed within the past five (5) years are considered, the median rate becomes \$26/sf. This indicates the current assessment is not over-stating the market value of the subject.
- [32] On this basis, the Board finds the current assessment of the subject to be a reasonable estimate of its current market value. The assessment remains unchanged at \$28,138,000.

Dated at the Town of Okotoks in the Province of Alberta this 6th day of August 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 (157 pages)	Complainant's Disclosure
R-1 (46 pages)	Respondent's Disclosure
C-2 (227 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.*