

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
0106790	100 Southbank Blvd.	\$16,838,000

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 stated they had no objections to the composition of the Board.
- [2] During the hearing, discussion occurred between the parties related to pre-roll negotiations. The Board deliberated on this discussion, particularly considering the Complainant's statements that these discussions occur without prejudice between the parties in the hope of resolving a complaint before it appears before the Board. In this case, the Respondent indicated an agreement between the parties had been reached but ultimately, was not endorsed by the Complainant. The decision not to endorse the agreement did not materialize in time for the subject assessment to be changed back to its pre-negotiation status before the roll "was closed" for finalization of the assessment.
- [3] The Board concludes it must deal only with the evidence presented at the hearing and finds any discussion that occurred between the two (2) parties in pre-roll consultations to be hearsay evidence, which the Board gave no weight. The essence of the assessment under complaint is the validity of the assessed rate for the retail spaces occupied by Goodlife and Sport Chek at \$22/square feet (sf) and \$21/sf respectively, and by The Shoe Company at \$25/sf, within the total assessment of the subject for \$16,838,000.
- [4] No other procedural or preliminary matters were raised by either party.

Background

- [5] The property under complaint (subject) is a 4.36 acre multi-occupancy retail parcel located at 100 Southbank Blvd. It has been improved with two (2) buildings constructed in 2010 resulting in a 29% site coverage. One (1) building contains 20,275 sf of assessable area demised into three (3) bays of 4,915 sf, 15,202 sf, and 5,073 sf (Sport Chek, Oshkosh, and the Shoe Company respectively). The other building contains 39,123 sf divided into two (2) bays of 25,405 sf and 3,718 sf (Good Life Fitness and Ace Liquor, respectively).
- [6] The subject has been assessed at \$16,838,000 using the Direct Capitalization/Income Approach to valuation. The larger bay in each building has been assessed as Retail CRU above 7,500 sf (>7,500 sf) in size at a rate of \$22/sf and \$21/sf. The three (3) remaining bays have been assessed as Retail CRU below 7,500 sf (<7,500

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sf) in size at a typical rent of \$25/sf. Operating costs are assessed at \$12/sf, vacancy allowance at 5%, and non-recoverable costs at 2% of effective gross income.

Issues

- [7] Should the retail spaces >7,500 sf be more fairly and equitably assessed at a rent rate of \$16/sf?
- [8] Should The Shoe Company, a tenant occupying a retail space <7,500 sf, be assessed at \$23/sf based on its current lease agreement?

Complainant's Position

- [9] The Complainant argues the subject is over-assessed from both a market and equity perspective and the Respondent has provided no evidence to support the current assessed rent rate applied to three of the subject's retail spaces.

Retail Space >7,500 sf

- [10] The Complainant advised the subject is located within Southbank Centre, a retail area in the southern part of Okotoks that encompasses two individual properties lying adjacent to one another. The subject is addressed as 100 Southbank Blvd. The property lying adjacent is addressed as 105 Southbank Blvd. The same corporation, Rio Can, operates these two (2) properties together.
- [11] Recent leasing activity at 105 Southbank Blvd. (retail space occupied by Winners, Michaels, and Dollarama) shows a fair market rent for retail spaces >7,500 sf should be in the range of \$16 to \$18/sf yet, within the subject, this space type is assessed at \$21 and \$22/sf (Goodlife Fitness and Sport Chek, respectively).
- [12] From a market perspective, the Complainant submitted a sample of comparable leasing details for Winners, Michaels, and Dollarama sourced from the rent roll for 105 Southbank Blvd. (current as of June 01, 2023), together with exterior photos of each comparable. The comparable leases commenced between February 2021 and April 2022, each running for a period of five (5) years. Two (2) of the leases were at a rate of \$16/sf, the third was at \$18/sf, identifying the median of the sample at \$16/sf.

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- [13] The Complainant identified these three (3) leases as also being equity comparables, given that they were all assessed at a rate of \$20/sf. In addition, the Complainant submitted a sample of five (5) other equity comparables being retail spaces >7,500 sf located throughout the municipality. These comparables were supported by the property record for each of the properties where they are located. The property records identified the size, rent rate, and income of each of these comparables. Exterior photos of each of these spaces were also provided.
- [14] The additional sample of equity comparables ranged in size from 17,468 to 154,119 sf (median of 37,868 sf) and were constructed between 1998 and 2016 (median of 2012). Comparatively the two (2) subject spaces have a median size of 20,303 sf and were constructed in 2010. Four (4) of the five (5) comparables are assessed at a rate of \$20/sf. It has already been noted the subject's Goodlife Fitness and Sport Chek retail spaces are assessed at \$21 and \$22/sf respectively.
- [15] The Complainant is requesting the Board adjust the rent rate for both the Goodlife Fitness and Sport Chek spaces to \$16/sf, aligning with their current lease rates. Should the Board not agree with this request, the Complainant is alternatively requesting these spaces be assessed with a rent of \$20/sf, to be consistent with the way all of the equity comparables have been assessed.
- [16] During questioning, the Complainant indicated it had not recalculated the CAP rate when making its request to use actual rent rates rather than the typical rates established by the Respondent.

The Shoe Company

- [17] The Complainant indicated The Shoe Company signed a lease on March 29, 2021 for \$23/sf, yet it is assessed at \$25/sf. The Complainant contends this indicates it is over-assessed. The Complainant is requesting the Board lower the assessed rent rate of this space to reflect the current lease at \$23/sf.

Respondent's Position

- [18] The Respondent argued the subject assessment at \$16,838,000 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.

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Retail Space >7,500 sf

- [19] 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.
- [20] 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 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.
- [21] A total of 15 current leases were reviewed for retail spaces >7,500 sf ranging from \$16 to \$33/sf. The leases of the three (3) comparable retail spaces at 105 Southbank Blvd were included in these 15 leases. However, the Respondent testified the actual leases for Sport Chek and Good Life Fitness are dated leases, having been negotiated outside of the five (5) year window used for derivation of typical rent rates. They were not used in the analysis.
- [22] The analysis provided a median rate of \$22.25/sf. Rents for retail spaces between 7,500 and 15,000 sf were isolated from this larger group and examined for this 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 105 Southbank Blvd. was assessed at \$20/sf.
- [23] As well, the Respondent noted the typical assessed rent for the Goodlife Fitness space should be \$22; the \$21/sf rent was not adjusted to reflect the current year's rate of \$22/sf.
- [24] With regard to the equity comparables offered by the Complainant, the Respondent notes Costco cannot be considered comparable. It is 7.5 times greater in assessed area than the median of the two (2) disputed retail spaces (Goodlife

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and Michaels), is owner occupied, and has much lower operating costs.

- [25] In questioning, the Respondent indicated it was not sure what the status was of leases included in the analysis because at this time, the municipality's database does not indicate if the lease is new, renewed, or a step-up lease.
- [26] The Respondent cautioned the Board that using actual lease rates requested by the Complainant instead of the typical rents, without then also recalculating the CAP rate, will produce an assessed value for the subject that is not a reliable indication of the market. If actual rates are used to calculate the net operating income and, subsequently, the CAP rate, all of the subject's actual rents should be applied to establish the new CAP rate. These two parameters need to be calculated on the same basis if a reasonable indication of market value is to be achieved. The Respondent suggested the Complainant was seeking to alter only those rents where the lease was lower than the typical rent.
- [27] The Respondent provided three (3) comparable properties located throughout the municipality to indicate the typical rent rates per space type had been used consistently. Assessments may differ on the basis of quality of a property or location, as some locations are considered superior to others, however, these differences result from differences in operating costs or different CAP rates being applied, rather than rent rates being applied inconsistently.

The Shoe Company

- [28] The typical rent for retail spaces <7,500 was derived from a pool of 56 current leases which included the current lease for The Shoe Company. These leases ranged from \$16 to \$39/sf, the median of which is \$28/sf. The Assessor used \$25/sf for this size range. Actual leases in this size range at the subject present a median of \$25/sf.
- [29] The Respondent indicated the typical rent of a range of leases means that 50% of the leases are above that value and 50% are below. If a particular lease is lower than the typical value, it does not indicate it has been assessed incorrectly.
- [30] The Respondent reviewed the rent roll for 105 Southbank Blvd. that was introduced by the Complainant. When only leases that are either new (base) or renewed leases are considered, many of these are at rates higher than The Shoe Company's lease.

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It is important to consider all of the information and not just that which supports the Complainant's request.

- [31] The Respondent requested the Board to find the current assessment of \$16,838,000 to be correct.

Rebuttal

- [32] The Complainant argued the Respondent had not provided sufficient information to allow the Complainant to respond to, or rebut, either the typical rent rate that had been established for space types or the comparables offered to show these typical rates had been used consistently throughout the municipality. 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.
- [33] The Complainant cited the Respondent's disclosure requirements as stated in section (9)(2)(b) of *Matters Relating to Assessment Complaints (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".
- [34] 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.
- [35] 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).
- [36] 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 reflects its fair market value. The Complainant suggested if the Board were to rely on these concepts, it could be

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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

[37] The assessed rent rate for each of the retail spaces >7,500 sf under complaint (Good Life Fitness and Sport Chek) are adjusted to \$20/sf. The assessed rent rate for the retail space occupied by The Shoe Company remains at \$25/sf.

Reasons

[38] 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 unequitable estimate of market value.

[39] 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, 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*). 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.

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Retail Space >7,500 sf

- [40] The Board finds the space type of retail space >7,500 sf was treated inequitably when compared to the equity comparables provided by the Complainant. While the Board recognizes the typical rent for this space type has been set at \$22/sf, the subject spaces were assessed at \$22 and \$21/sf respectively, and similarly sized spaces within the same and adjacent retail areas in the municipality have an assessed rent of \$20/sf applied.
- [41] The Board does not consider Costco at \$10/sf to be comparable to the subject and reconfigures the sample without it. The median assessed rent of the remaining retail spaces is unchanged at \$20/sf.
- [42] The Board took heed of the Respondent's advice that the application of actual rent rates without recalculating the CAP rate could produce an inaccurate estimate of the market value of a property. The Board is of the opinion that altering rents within the subject to a rate that has been used for other similar rent spaces and in locations similar to the subject would not result in an unreasonable estimate of market value.
- [43] Accordingly, the Board alters the assessed rent rates for the Sport Chek and Goodlife Fitness spaces to \$20/sf for the 2023 assessment year.

The Shoe Company

- [44] The Board finds the Complainant did not provide any market evidence that the retail space occupied by this tenant is over assessed.
- [45] The Respondent pointed the Board to the rent roll for 105 Southbank Blvd., indicating it is important to consider all of the leases included. The six (6) leases that are base or renewed leases were executed between June 2021 and April 2023. All would have been included in the lease analysis done by the Respondent in determining the typical market rent of \$25/sf for this space type. The median of these six (6) leases is \$31.50. The Board accepts the Respondent's logic that while The Shoe Company renewed its lease at a rate of \$23/sf, which is below the typical rent, this does not mean it has been improperly assessed.

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[46] The Board finds insufficient market evidence was presented to persuade it to alter the rent rate for this retail space; the typical rent of \$25/sf fairly represents the market value of this retail space.

Summary

[47] The assessed rent of the retail spaces occupied by Sport Chek and Good Life Fitness are assessed at \$20/sf and the retail space occupied by The Shoe Company is assessed at \$25/sf, resulting in a total assessment of \$16,038,795, truncated to \$16,039,000.

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 (172 pages)	Complainant's Disclosure
R-1 (42 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*
- (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.*