

**OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/01/2014**

**IN THE MATTER OF A COMPLAINT** filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the Municipal Government Act (the Act), Chapter M-26 Section 460, Revised Statutes of Alberta (2000).

**BETWEEN:**

1528670 Ontario Ltd. - Complainant

- and -

The Town of Okotoks - Respondent

**BEFORE:**

K. Kelly, Presiding Officer  
D. Howard, Member  
L. Buchholz, Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (CARB) in respect of property assessments prepared by the Assessor of the Town of Okotoks as follows:

<b>Roll Number</b>	<b>Address</b>	<b>Assessment</b>
Roll Number 0056750	47 Riverside Gate	\$23,841,200

This complaint was heard on the 2<sup>nd</sup> day of October, 2014 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- J. Havrilchak - Ryan Property Tax Services ULC (Agent for the Complainant)

Appearing on behalf of the Respondent:

- P. Huskinson – Municipal Assessor – Town of Okotoks

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### **Preliminary Matters:**

- (1) The Respondent advised the Board that the Complainant's "Rebuttal" document C-2 contained two pages of materials that the Respondent considered to be "new information" that had not been prior-submitted to the Town in accordance with relevant Alberta legislation. The Respondent identified the materials on pages 5 and 6 of C-2 as CBRE Richard Ellis "Canadian Cap Rate Survey" for Q1 and Q2 of 2013.
- (2) The Complainant advised that the materials were intended to support arguments to be made regarding an appropriate capitalization rate to be used in an Income Approach to Value calculation of alternate assessed value for the subject.
- (3) The Board opted to defer consideration of the Respondent's request until the point in the hearing where the rebuttal document would be entered into the record and presented by the Complainant. This would allow the Board to better understand the scope and nature of the Complainant's initial evidence as outlined in C-1, and then to compare the disputed documentation in C-2 against that material.
- (4) Subsequently, at the appropriate point in the hearing, the Board accepted final argument on this issue from the parties, and thereupon recessed to consider the matter. The Board re-convened and advised the parties that it considered the Complainant's CBRE materials as presented in document C-2, to be a generally-published extension of similar and published CBRE materials found on pages 144 and 145 of C-1. The similar materials in C-1 were CBRE Richard Ellis "Canadian Cap Rate Survey" for Q3 and Q4 of 2013. Therefore the Board allowed the disputed materials in C-2 to remain.

### **Property Description and Background:**

- (5) The subject property is a four-storey 134 unit steel and concrete multi-residential mixed-dwelling seniors complex on 1.8 acres (Ac.) of land situated at 47 Riverside Gate in the Town of Okotoks. The subject was constructed in 2009; possesses a total of 103,115 square feet (SF) of living space; 28,200 SF of underground parking space; and is zoned "RMD" (Residential Mixed Dwelling) in the Town's Land Use Bylaw.
- (6) The subject is assessed using the "Cost Approach to Value" (Cost) methodology whereby the improvement is valued using "Marshall and Swift Estimator" at \$22,870,739. The land portion of the assessment calculation values the subject's 1.8 Ac. at a typical \$999,444 per Ac. or \$1,799,000. Added together, the subject's assessed value is calculated to be \$23,841,200. This is the value before the Board.



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### **Issues:**

(7) Has the Assessor erred in using the "Cost Approach to Value" (Cost Approach) methodology instead of the "Income Approach to Value" (Income Approach) methodology to assess the subject, since the Cost Approach does not consider or adjust for existing "chronic" vacancy in the subject?

### **Board's Findings in Respect of Each Matter or Issue:**

(8) The Board finds, based on the evidence, that contrary to the assertions of the Complainant there is no chronic vacancy in the subject, and furthermore the Assessor correctly and appropriately used the Cost Approach to Value methodology to assess the subject. Therefore the assessment is confirmed at \$23,841,200.

### **Summary of Positions:**

#### **Complainant's Position:**

(9) The Complainant argued that the Respondent had erred in using the Cost Approach to Value methodology to assess the subject because that methodology did not allow for a "chronic vacancy" issue in the subject to be addressed and accounted for in the building's market value. It was argued that the Respondent should have used the Income Approach to Value methodology so that a vacancy approaching 25% could be factored into a revised assessment calculation. The Complainant provided the December 31, 2013 quarterly "Income Statements" for the subject in support of this argument.

(10) The Complainant argued that the subject operates, and is functionally similar to a hotel, and hotels are valued using the Income Approach to Value methodology. It was explained that two of the key inputs used to calculate the market value of hotel properties are "vacancy rate" and "capitalization rate" (cap rate). The Complainant argued that while the current vacancy in the subject approaches 25%, nevertheless it was decided (for unspecified reasons) that only a 10% vacancy should be used in an alternate "Income Approach" calculation.

(11) The Complainant also concluded that published "Industry" market materials by CBRE Richard Ellis for 2013 indicate that a 6% (hotel) cap rate should be used in the alternate assessment calculation. Using these two inputs (6% cap rate; 10% vacancy rate), in addition to selected actual financial values from the subject's "2013 income statements, the Complainant calculated (using an Income Approach to Value methodology) that a reduced value of \$15,234,000 is appropriate for the subject.



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(12) The Complainant questioned the Respondent's interpretation of the Marshall and Swift Estimator as applied to the improvement on the subject, suggesting that certain factual and interpretive errors, such as "double counting" had occurred. It was argued that the Marshall and Swift calculation provided by the Complainant was more correct and demonstrated a depreciated value of \$13,594,360 for the improvement instead of the assessed \$22,042,212. The Complainant questioned the assessed typical land value of \$999,444 per Ac. or \$1,799,000 for the subject's 1.8 Ac., but provided no market evidence to refute this value, which was also used in the Complainant's calculations.

(13) The Complainant argued that it was not possible to find properties comparable to the subject, either in the Town or elsewhere, because they were "difficult to come by". Therefore it was not possible to provide either comparable market sales, or assessment equity examples to support the Complainant's position. It was argued that notwithstanding this situation, a legal precedent from the State of Virginia in the United States ("*Circuit Court of Loudoun County Virginia – 64 Va. Cir. 317; 2004 Va. Cir. LEXIS 157*") supported the Complainant's position of arguing for the Income Approach to be used to assess the subject instead of the allegedly "erroneously applied" Cost Approach.

(14) The Complainant provided five Assessment Review Board Decisions from three Alberta municipalities in support of his position that "chronic vacancy" should be considered when assessing properties like the subject. Also provided for similar reasons was an Alberta Municipal Government Board decision (MGB 236/00), and a decision respecting a "Senior Living Services " assessment appeal in Fairfax County, Virginia, USA.

### **Respondent's Position:**

(15) The Respondent argued that in the Complainant's Income Approach calculation, the vacancy, cap rate, and income parameters used to calculate the \$15,234,000 revised assessment, are significantly flawed. It was noted that the cap rate of 6% is not based on any market sales of comparable properties, but instead is based on the false notion that the subject apartment building is equivalent to a commercial hotel. It was suggested that based on this unsupported assumption, the identified 6% cap rate for hotel properties as taken from the CBRE data sheets, is incorrectly applied to the subject.

(16) In addition, the Respondent noted that while the subject is reported by the Complainant (pg. 15 – C-1) to have a 24.6% actual vacancy, the Complainant opted to arbitrarily use an unsupported 10% in its calculations. The Respondent noted that the Complainant's own documentation as shown on page 15 of C-1 demonstrates clearly that the subject experienced a declining vacancy rate, and, an increasing occupancy rate year-over-year for the past three years. Therefore, it was stated, the subject does not suffer from chronic vacancy as alleged by the Complainant.



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(17) The Respondent also noted that in response to questioning, the Complainant confirmed that it used selected (incomplete) aspects of the subject's "financial statement" as inputs to its Income Approach calculations. It was argued that because not all relevant financial information was used by the Complainant in its calculations, this has tended to skew the ultimate calculated results. Therefore, it was argued, given the questionable 6% cap rate; 10% vacancy rate; and selected (incomplete) financial data used in the Complainant's Income Approach calculations, the calculated value of \$15,234,000 is unreliable.

(18) The Respondent clarified that the specific details of the subject's construction and renovation, as taken from the municipally-approved building plans, as inspected, were used to properly assess the property using Marshall and Swift Estimator. Also provided were selected relevant sections of the "Alberta Building Code 1997". It was clarified that initially the subject was to be constructed primarily of reinforced concrete, but subsequently the owner decided to incorporate steel. According to Marshall and Swift, the use of steel increased the value of the improvement marginally from \$22,042,212 to \$22,870,739 however the lesser value was used to assess the subject for 2014. Maps and aerial photos of the subject both by itself, and in relation to two property comparables within the Town, were also provided.

(19) The Respondent provided and extensively cited various relevant sections of Parts 9 and 10 of the "Alberta Municipal Government Act" (MGA) governing the duties, responsibilities, and procedures to be used by Assessors, and in assessment practices in Alberta. In particular the Respondent referenced Section 293 of the MGA in this regard. In addition the Respondent referenced "Alberta Regulation 220/2004 being "Matters Relating to Assessment and Taxation Regulation" (MRAT) to confirm that the Assessor must establish the "fee simple" market value of a property. It was also confirmed that the Assessor is required by legislation to choose an assessment methodology that most correctly defines the market value of any property. The Respondent confirmed that in assessing the subject, it selected the Cost Approach to Value and had therefore followed the legislation as required.

(20) The Respondent provided copies of Alberta Land Titles documents to confirm that the subject was acquired by the current owner in May 2010 for \$18,995,000. Also provided was Municipal inspection documentation confirming that 80% of an \$8,000,000 renovation was completed at that time. The Respondent argued that in the intervening years, the renovations have been completed, occupancy resumed, and the subject has increased, not decreased in value. It was argued therefore that the Complainant's request to reduce the assessment by approximately \$4,000,000 from the original purchase price of \$18,995,000, to \$15,234,000 is inappropriate and unsupported.



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(21) The Respondent provided and described in detail, a matrix containing the physical and assessment details pertaining to two nearby property comparables – both of which are functionally and physically similar to the subject, and assessed using the same methodology as the subject. The Respondent argued that all three properties are fairly, correctly, and equitably assessed, however the Complainant has provided no equity or market sales evidence whatsoever to the contrary. The Respondent reminded that Section 467(3) of the MGA limits the discretion of the Board such that it must not alter an assessment of a property that is correct, fair, and equitable.

(22) The Respondent individually addressed each of the Complainant's three CARB and one MGB decisions from rebuttal document C-2. The decisions pertained to assessment appeals from Strathmore, Calgary, and Medicine Hat. It was clarified in detail that the individual so-called "chronic vacancy" circumstances of each of the affected properties in these decisions, were entirely different from the circumstances pertaining to the subject in this hearing. In MGB decision 236/00 (Calgary) for example the matter before the Board in that hearing related to an atypical "one-time cost to cure" which is not the issue before the Board today. In CARB 1339/2012-P (Calgary) for example, the subject is an office building and not an apartment building. Therefore, it was argued, the Complainant's reliance on these decisions is misplaced.

(23) The Respondent provided two Board decisions – one from the Town of Okotoks (CARB Decision 0238-04-2011) and one from the Alberta Municipal Government Board (MGB 111-10) which, it was argued, support the position of the Respondent in this appeal. The Respondent advised that the onus is on the Complainant to demonstrate that the assessment is incorrect but has not done so. Therefore, it was argued, the assessment should be confirmed at \$23,841,200.

### **Findings and Reasons:**

(24) The Board finds that contrary to the assertions of the Complainant, the subject does not "suffer" from chronic vacancy. The evidence provided by the Complainant, in fact demonstrates that the vacancy rate in the subject is, and has been declining over the past three years – not the reverse.

(25) The Board finds that contrary to the assertions of the Complainant, the evidence demonstrates that the Respondent has not erred in its selection and application of the Cost Approach to Value methodology used to assess the subject. The Board noted that the Complainant failed to demonstrate that the Respondent incorrectly interpreted and applied the Marshall and Swift Estimator when calculating the assessment of the subject's improvement.



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(26) The Board finds that it declines to accept the Complainant's argument that the subject is directly comparable in form and function to a commercial hotel and should therefore be assessed like a hotel using the Income Approach to Value methodology. The Board accepts the evidence and position of the Respondent that the subject is a specialized and appropriately/extensively modified Seniors' apartment building.

(27) The Board finds that while the Complainant questioned the validity of the \$999,444 per Ac. or \$1,799,000 land value for the subject's 1.8 Acre parcel, no market or other evidence was adduced by the Complainant to support an alternate value.

(28) The Board finds that the Complainant provided no property comparables similar to the subject, nor assessments thereof, to demonstrate that the subject is assessed inequitably. Moreover, the Complainant provided no independent market sales or related evidence to demonstrate that the assessment is incorrect. In the contrary, the Respondent provided two property comparables from within the Town of Okotoks which display characteristics similar to the subject, and have been assessed similar to the subject and support the assessment.

(29) The Board finds that the Complainant's estimate of value using the Income Approach to Value methodology is flawed in large part because the 6% capitalization rate and the 10% vacancy rate used in the calculation, are unsupported. The 6% cap rate is based on the incorrect assumption that the subject is, for all intents and purposes, a commercial hotel, which it is not. The 10% vacancy rate is based on nothing more than conjecture.

(30) The Board finds that the Respondent's Alberta Land Titles documentation regarding the sale of the subject to the current owners in May 2010 for \$18,995,000 demonstrates that the fee simple market value of the subject is currently not \$15,234,000 as advanced by the Complainant.

(31) The Board concurs with the Respondent, and in review, finds that the several Board decisions advanced by the Complainant in support of its position are not relevant to the assessment of the subject because they deal with circumstances and property types that are different from the subject. In the contrary, the Board finds that the principles contained in the two Board decisions advanced by the Respondent support the assessment.

(32) The Board finds that in accordance with the Municipal Government Act and Alberta Regulation 220/2004 the Respondent assessed the subject in a correct, fair, and equitable manner.

(33) The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is not correct, fair, or equitable.


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**Board's Decision:**

(34) The assessment is confirmed at \$23,841,200.

**It is so ordered.**

Dated at the Town of Okotoks in the Province of Alberta, this 14<sup>th</sup> day of October, 2014.

  
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K. D. Kelly  
Presiding Officer



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## APPENDIX "A"

### DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C-1	Complainant Disclosure
2. C-2	Complainant Disclosure - Rebuttal
3. R-1	Respondent Disclosure

**An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:**

*470(1) An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*470(2) Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*470(3) An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*

*For Administrative Use Only*

Appeal Type	Property Type	Property sub-type	Issue	Sub-Issue
CARB	Multi-residential	Seniors apartments	Market value	Methodology - Cost versus Income approach