

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/02/2012-M

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the Municipal Government Act Chapter M-26.1 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

1528670 Ontario Limited - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

Rob Irwin, Presiding Officer
Lyle Buchholz, Member
Jamie Tiessen, Member

A hearing was held on the 17th day of September 17, 2012 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta, to consider a complaint about the assessment of the following property tax roll number:

- Roll Number 0056750
- 2011 Assessed Amount \$22,967,700
- Requested Assessment \$13,000,000 (on form)
- Revised requested amount \$16,286,500 (in the evidence and at the hearing)

Appearing on behalf of the Complainant:

- Altus Group Limited (Agent for the Complainant) C. VanStaden

Appearing on behalf of the Respondent:

- Paul Huskinson, Assessor, Town of Okotoks

Attending for the ARB:

- Linda Turnbull, ARB Clerk

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Property Description and Background:

The subject property is a 134 suite multi-residential seniors building located at 47 Riverside Gate in the Town of Okotoks. The building is on a 1.8 acre site with a land use of Residential Mixed Dwelling (RMD).

The 4 storey building year of completion (YOC) is reported as 2009 and it has a Total Building Area of 131,315 square feet (living - 103,115, parkade - 28,200). The assessment details describe the land assessment as \$1,799,000, at \$999,444 per acre or \$22.94 per square foot. The improved assessment of \$21,168,700 is \$161 per square foot with a total property assessment of 22,967,700. This is \$175 per square foot and each dwelling unit at \$171,400.

The subject property was reported as sold to the Complainant in a 2010 foreclosure sale at \$18,990,000.

Procedural or Jurisdictional Matters:

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to the complaint, as outlined below.

Issues:

Pursuant to Section 460 of the MGA and Schedule 1 of the Alberta Regulation 310/2009 the Complainant has identified a number of issues for adjudication by the Board. The Complainant stated that the only issue remaining in dispute was:

- Issue 1 – An assessment amount

Other Issues on the Form:

The Board sought clarification of the complaint form as it was noted that the form had 3 checked boxes in Section 4 (Box 3 an assessment amount; Box 4 an assessment class and Box 10 an exemption request). Also, the box questioning compliance with Sections 299 and 300 of the Municipal Government Act was checked as "No".

The Complainant explained to the CARB that as the form was completed well in advance of the actual case preparation and that all possible issues had been identified. As the issue of compliance of Sections 299 and 300 was satisfied and therefore withdrawn they argued only the issue of an assessment amount.

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Regarding Brevity:

The (CARB reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items found most relevant.

Summary of the Parties Positions:

Complainant:

1. The Complainant took the position that the land value applied to the subject was incorrect and inequitable. It was challenged that the adjustment applied is incorrect as it disregarded the topography, access, inability to subdivide, encumbrances, shape and other influences.
2. The Complainant led the CARB through a series of reports to illustrate an argument pertaining to vacancy and absorption rate of the building. The Complainant related how the subject property is rented by individuals who also require services such as meals, recreation, health care and that rents paid include these additional services. It was stated that these services were considered as "going concerns". Details of demographics and income levels were revealed to indicate the time it would require a facility of this type to become fully occupied.
3. Citing that the cost approach has been used by the assessor and GST applied incorrectly to value the subject improvements, the Complainant argued the Income Approach should be used to assess the subject property and presented calculations.
4. The Complainant stated that although they did not dispute the sale of the subject, the sale price should be adjusted as the sale included an array of appliances and/or chattels that were warehoused.
5. The Complainant also questioned the accuracy of the Sale Comparability Approach when there were no sale of R-MD lands and a rate must be extrapolated from sales of other higher density lands.

Respondent:

1. The Respondent presented land information data of comparable properties in Okotoks and the surrounding area supporting the assessed land rate.
2. The Respondent believed the demographic and above average local incomes presented a strong future market and suggested that would be exactly why the property was purchased by the Complainant. The Respondent disagreed with the Complainant that there was "going concern" value and presented pictures and testimony supporting that position.

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3. The Respondent testified that the assessment had been conducted in accordance with the regulations and GST applied consistently in all other assessments in the municipality.
4. Reports were presented outlining that at the time of sale the property was 75-85% complete. The Respondent questioned there was no evidence of "non-assessable" chattels associated or included with the property at the time of sale as claimed by the Complainant.
5. The Respondent stated that the assessor must value the fee simple estate and held that valid sale transactions provide the best indicator of market value. It was disclosed that the subject property was reported as sold to the Complainant in a 2010 foreclosure sale at \$18,990,000. Further, it was emphasized that the Complainant was one of the largest national companies dealing in multi-family seniors housing. The Respondent believed that the Complainants were sophisticated buyers who purchased the subject property after completing a complete market review and were well aware of budget and cost details of operating such a project.

Findings and Reasons:

The CARB carefully considered all evidence presented by the Complainant and Respondents presented at the hearing in arriving at this decision.

1. The Complainant's Land Value argument was of little value to the Board due to the combination of data sets and resulting conclusion. Values of sale prices and assessment values were combined to create the Complainant's comparables chart. The Respondent's presentation of land value was deemed more reliable as it included more local information and more similar property. The Board found that the Complainant did not present argument to support the cited location deficiencies while the municipality convinced the Board that the subject property had a desirable location. The property under appeal borders on a riverside walkway and path system, had easy access and was in close proximity to downtown.
2. The absorption and vacancy arguments did not convince the Board that the assessment was incorrect. The Board found the Complainant's evidence depicting the above average local income levels indicated above average opportunity relating to ability to populate the project.
3. The Board found that the municipality assesses all property of a similar type fairly in the municipality.
4. The Board found that there was no evidence of un-assessable chattels.

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5. The Board found the recent sales evidence of the subject property to be compelling in ascertaining market value.

The Board referred to MGA.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

Board's Decision:

Issue 1

In view of the above considerations, the CARB finds as follows with respect to Issue 1:
The appeal is denied and the 2011 Property Assessment is confirmed as follows:
Roll Number 0056750 \$22,967,700.

It is so ordered.

Dated at the Town of Okotoks, in the Province of Alberta, this 3rd day of October 2012.



R.H. Irwin
Presiding Officer

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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.*