

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/04/2011-M

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board pursuant to the *Municipal Government Act*, Chapter M-26.1, Section 460.

BETWEEN:

Prairie Fire (Okotoks) G P Ltd. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

H. Kim, Presiding Officer
L. Buchholz, Member
J. Tiessen, Member

These are complaints to the Town of Okotoks Composite Assessment Review Board (CARB) in respect of property assessments prepared by the Assessor of the Town of Okotoks and entered in the 2011 Assessment Roll as follows:

Roll Number	Address	Assessment
Roll Number 0058275	300 201 Southridge Drive	\$15,621,000
Roll Number 0061300	700 210 Southridge Drive	\$16,122,000

This complaint was heard on the 20th day of September, 2011 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group – S. Sweeney-Cooper

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the CARB:

- L. Turnbull, ARB Clerk and D. Scott, Assistant

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Property Description and Background:

The properties under complaint are two parcels in the Cornerstone Okotoks power centre at the south boundary of the Town of Okotoks (Town). They are both assessed using the income approach to value based on rental rates as noted below with 3% vacancy, \$5.75/SF operating costs and 8% capitalization rate applied to arrive at the assessments under complaint.

- Parcel 1 at 300 Southridge Drive consists of two buildings constructed in 2004 with retail CRUs ranging from 1,366 to 9,386 SF assessed at rental rates of \$20 to \$35/SF and office CRUs ranging from 1,018 to 1,874 SF assessed at rental rates of \$27 to \$28/SF. It also has a 21 SF CRU assessed as retail at \$32/SF, of unknown characteristics.
- Parcel 2 at 700 Southridge Drive consists of three buildings constructed in 2003 consisting of a 42,792 SF grocery store with 2,515 SF mezzanine office assessed at \$16 and \$12/SF respectively, a 6,156 SF bank assessed at \$35/SF and retail CRUs ranging from 1,041 to 3,485 SF assessed at rental rates of \$30 to \$32/SF.

Only the rental rates are under complaint, and the Complainant submits that correct market rental rates would result in an assessment of \$13,560,000 for Parcel 1 and \$14,810,000 for Parcel 2.

Issues:

A number of issues were listed in the complaint form; however the issues argued at the hearing and contained within the original complaint were as follows:

1. Are the rental rates applied in excess of market rates?
2. Should the mezzanine space be assessed at a nominal rate of \$1/SF?
3. Are the rental rates applied inequitable?
4. Does the increase over the previous year indicate that the assessment is too high?

CARB'S Findings in Respect of Each Matter or Issue:

Issue 1 - Rental Rate

Complainant's Position:

The rental rate for the grocery store is not in dispute; however the assessed rental rates for the CRUs are significantly in excess of what is being achieved. The Complainant presented the rent roll for Parcel 1 showing actual lease rates of \$17 to \$31/SF, and a table of assessed rates compared to actual for both properties to demonstrate that the value based on actual income for Parcels 1 and 2 supported a market value of

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\$11,497,418 and \$13,991,857 respectively compared to \$15,621,615 and \$16,122,584 as assessed.

The Complainant did not have access to market data for leases within the Town and presented rates based on 13 CRU leases in power centres in four quadrants of the City of Calgary that commenced between July 2009 and July 2010. The spaces were leased at rates between \$17 and \$38/SF with an average of \$25.25 and a median of \$22.00. This demonstrates that the market rental rates for the subject properties are overstated.

Respondent's Position:

The *Municipal Government Act* (Act) and *Alberta Regulation 220/2004, Matters Relating to Assessment and Taxation* (Regulation) require the Assessor to assess the fee simple estate in the property. This requires assessment to be based on current market indicators, notwithstanding that the actual leases may be dated and at lower than market rates. The Respondent presented a completed Assessment Request for Information (ARFI) for Parcel 2 that showed two recent leases (commencing June 2010 and July 2010) at \$31 and \$32/SF. The ARFI for Parcel 1 was not presented as none of the leases in that property were recent. ARFIs submitted to the Respondent for similar properties in the market area support the rates used in the assessment.

The Respondent questioned the relevance of lease rates from the City of Calgary, as it is a different market area. Further, the lease rates in the Complainant's submission were presented on a spreadsheet with no lease documentation that could support the values listed.

Findings and Reasons:

The Act and Regulation require assessment to be based on the value of the fee simple estate. Where a property owner has entered into long term leases at less than market rates, the expected selling price of the property could be impacted but it does not impact the value of the fee simple estate. For assessment purposes, the CARB agrees that market rates in the relevant time period must be applied in determining value based on income, not the actual contract rents achieved.

The majority of the leases in the rent roll for Parcel 1 commenced in 2004, and cannot be relied on as indicative of market rates in 2010. The most recent lease listed commenced July 2009, a 5,116 SF CRU at \$18/SF. It is assessed at rental rate of \$26/SF but the CARB accepts the evidence of the Respondent that this was a renewal and not reflective of market rates. The rent roll for Parcel 2 was not submitted, but recent leases indicated in the ARFI for Parcel 2 supports the rates used in the assessment.

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Issue 2 – Mezzanine Rental Rate

Complainant's Position:

Mezzanines do not generally command rent, but because they exist, a nominal rental rate is placed on them for assessment purposes. The Complainant presented a number of assessment details from the City of Calgary to show that the City assesses mezzanine space at a rate of \$1/SF. The rental rate for the grocery store was not under dispute but the 2,515 SF area of the mezzanine is not included in the leased area and should not be assessed at \$12/SF. While the actual rate is zero, the nominal \$1/SF was included in the calculation of the requested assessment.

Respondent's Position:

The mezzanine area falls under the definition of improvements under the Act, and must therefore be assessed. Photographs in the Respondent's submission showed uses in the mezzanine space included office space, staff areas and washrooms. Whether it is included in the rentable area is not relevant. The Respondent cited one specific recent lease in the Town, where a \$15/SF rate was applied to the mezzanine space as part of the leased area.

The Respondent referred to a Municipal Government Board (MGB) order, MGB111/10, which dealt with the 2009 assessment of one of the other parcels in the Cornerstone Okotoks power centre. The MGB considered this issue, which was argued by the Complainant using the same arguments as was advanced in the subject complaint, and determined that the mezzanine should be assessed.

The rates applied for mezzanine areas vary depending on the use and level of finish. The Respondent presented a table showing mezzanine area, use and assessed rates for other properties in the Town to demonstrate that rental rates of \$5 to \$27/SF are applied. Assessment practices in other municipalities are irrelevant. All mezzanines in the Town are assessed at market rates. If the subject mezzanine were reduced to a nominal rate, it would be unfair to other properties in the Town that have the same space all on the main floor.

Findings and Reasons:

The mezzanine has utility and should be assessed. While there was evidence that the subject grocery store lease was based on the main floor area only, it was not shown to be generally true of leases in the Town. When mezzanine area is included without a separate charge, it stands to reason that the base main floor rate includes the value of the mezzanine space. In such a situation the reported base main floor rate could be adjusted to remove the value attributed to the mezzanine space. The actual rate of \$15.25/SF would

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be \$14.55/SF removing the assessed value of the mezzanine at \$12/SF. This is less than the \$16/SF used in the assessment; however, the subject lease commenced in 2004 and no evidence was led as to the current market rental rate for the main floor space, nor whether main floor space without a mezzanine would rent at a different rate than space with a mezzanine. In any event, the base rate for the grocery store was not under complaint.

The CARB accepts that the assessment methodology for mezzanines is consistent within the Town. Accordingly, it would be inequitable to reduce the subject mezzanine rate to a nominal value.

Issue 3 - Equity

Complainant's Position:

Assessment details for similar CRU space in the City of Calgary were presented to demonstrate that rental rates applied in the City are substantially less than the rates used by the Town in the assessment. The Complainant alleged that this was inequitable.

Respondent's Position:

Equity is relevant only within the Town. The purpose of property assessment is to assess all similar property at a similar value so that taxation is fairly and uniformly distributed among all taxable property. Assessments in other municipalities are irrelevant. The Act states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration the assessments of similar property in the same municipality.

Findings and Reasons:

The CARB agrees that the purpose of property assessment is to distribute the cost of municipal government among taxpayers, and therefore equity is only important within a municipality. The legislation has provision for standards of assessment relative to market value, but no provision requiring equity between different municipalities, therefore the CARB gave no consideration to the Complainant's equity argument.

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Issue 4 - Increase over the previous year

Complainant's Position:

The 2011 assessment was a 29% increase over the 2010 assessment. This is unfounded and too high.

Respondent's Position:

Lease rates in the Town increased over the past few years, but this was the first year in which there was sufficient lease evidence to adjust the rates applied in the assessment. The assessment did increase substantially but the Respondent submitted that it is a reflection of market value.

Findings and Reasons:

Year over year changes in assessment, in isolation, do not demonstrate that the assessment is flawed. It is possible that the rates were understated in the previous year, however if they were understated generally among all similar properties, equity would have been maintained. The Complainant did not present evidence to suggest the increase in the subject properties was excessive relative to similar properties.

Other Issues – Suggested increase in the assessment of Parcel 1

The Respondent's submission included recommended adjustments to rental rates for Parcel 1. One of the CRUs in that property had a building permit application in March 2010 for a 795 SF mezzanine which was issued on July 22, 2010. This was missed in calculating the assessment, and, along with other minor adjustments, the assessment should have been \$15,876,000 instead of \$15,621,000. The Respondent stated he was not pursuing this, as there had been challenges to the court with respect to whether an assessment review board could raise an assessment, and he did not believe it would be beneficial to the Town to use its resources to defend a similar challenge. The Complainant did not address this issue.

Findings and Reasons:

In view of the reluctance of the Respondent to pursue this matter, the CARB considered the matter but did not analyze this issue in detail. While the Act provides for an assessment review board to make any change to an assessment, there was no evidence (in the form of an occupancy permit or similar document) that the mezzanine had been constructed prior to the December 31, 2010 condition date. Therefore the CARB had insufficient evidence that it should have been included in the 2011 assessment.

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The Regulation states that a CARB must not hear any matter in support of an issue that is not identified on the complaint form. This issue was raised by the Respondent and was not on the complaint form. Further, the CARB notes that the Act provides for corrections to the assessment of a property under complaint once the decision has been rendered:

- 305(1) If it is discovered that there is an error, omission or misdescription in any of the information shown on the assessment roll,
- (a) the assessor may correct the assessment roll for the current year only, and
 - (b) on correcting the roll, an amended assessment notice must be prepared and sent to the assessed person.
- ...
- (5) If a complaint has been made under section 460 or 488 about an assessed property, the assessor must not correct or change the assessment roll in respect of that property until a decision of an assessment review board ... has been rendered ...

Therefore, the CARB determined that it would not make adjustments to Parcel 1 as suggested by the Respondent.

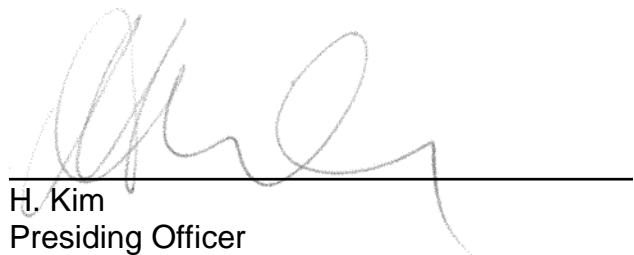
Board's Decision:

The assessments are confirmed as follows:

Roll Number 0058275	300 201 Southridge Drive	\$15,621,000
Roll Number 0061300	700 210 Southridge Drive	\$16,122,000

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 3rd day of October, 2011.



H. Kim
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.*