

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/05/2014

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:

Prairie Fire (Okotoks) GP Ltd. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

K.D. Kelly, Presiding Officer
J. Tiessen, Member
R. May, 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:

Roll Number	Address	Assessment
0061300	700, 201 Southridge Drive	\$19,242,800

This complaint was heard on the 10th day of October, 2014 in the Town of Okotoks Council Chambers at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- A. Izard - Altus Group Limited (Agent for the Complainant)

Appearing on behalf of the Respondent:

- P. Huskinson – Assessor, Town of Okotoks

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Regarding Brevity

(1) The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The 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 it found to be most relevant.

Preliminary Matters:

Matter #1:

(2) At the commencement of the hearing, the Complainant argued that the Respondent failed to provide certain materials to the Complainant as requested under Sections 299 and 300 of the Municipal Government Act (MGA). It was alleged that these materials now appeared in the Respondent's brief R-1 on pages 20 and 22 of R-1, and as a major part of the Respondent's addendum #5. The "offending" materials on page 20 included firstly, a chart prepared by the Respondent labelled "Grocery Lease Trends"; and secondly, a chart entitled "Reconciled Grocery Market Leases".

(3) The Complainant argued that the first two (un-numbered) pages of addendum #5 – that being the same materials as page 20 of R-1 [see (1) above]; and, all of the remaining material in addendum #5 – except for a site plan of the Cimarron Shopping Centre on a page identified as "35 of 136", should be removed from the Respondent's R-1 and the hearing.

(4) The Respondent advised that the materials on page 20 of R-1 were compiled by the Town from data originally provided by the Complainant's office, most of which is contained in addendum #5. As such, it was argued, the Complainant should have been aware of this material. It was noted that while the pages in addendum #5 are not clearly or consecutively numbered, the "Altus Group" logo appeared at the top of two pages – a page identified as "1 of 139", and another page identified as "47 of 139". The Respondent clarified that other data requests by the Complainant related to either "Appraisal Theory" which the Complainant should have, or information the Town did not possess, and this was akin to "data mining". It was reiterated that the Town had provided everything requested by the Complainant.

(5) The Complainant argued that the "offending" materials on page 22 of R-1 related to a chart prepared by the Respondent and titled "Grocery Comparables" which contained selected assessment and site details for four property comparables, and the subject, in Okotoks. The Complainant initially requested that the entire chart be removed from the hearing, but subsequently amended the request to exclude only references to Costco and WalMart.

Note: later, during the course of the hearing, on two separate occasions, the Complainant subsequently changed his mind and stated that he had no objection to firstly the Costco information, and secondly (somewhat later) the WalMart information being introduced into the hearing by the Respondent.

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(6) With reference to the chart on page 22 of R-1, the Respondent argued that the “No Frills” and “Safeway” stores are clients of the Complainant and therefore it would have access to this information in any event. It was argued that this information should remain a part of the hearing. The Respondent further clarified that some of the information initially requested by the Complainant under Sections 299 and 300 of the MGA, is confidential information provided to the Town by the respective property owners. It could not be released to the Complainant by the Town unless the property owners agreed. However, the information in the chart on page 22 of R-1 was generally viewed as public information.

(7) The Complainant introduced document C-2 which contained copies of four Court Decisions – one from British Columbia and three from Alberta, that were considered relevant to this issue. Also provided were nine Composite Assessment Review Board Decisions, also considered relevant. The Complainant reiterated his initial request that all of the foregoing referenced materials in R-1 be removed from the hearing.

Board's Decision Concerning Preliminary Matter :

(8) The Board recessed the hearing to consider the positions of the two parties. After due consideration, the Board re-convened the hearing. The Board decided the matter and announced to the parties as follows:

Matter #1

(9) Based on the information provided to the Board by the parties, the Board opted to delete from the Respondent's evidence package R-1, each of the chart and graph on page 20. The chart on page 22 of R-1 remains in its entirety, since it is information largely in the possession of the Complainant. Also deleted from R-1 addendum #5 were un-numbered pages 1 and 2 (i.e. the first two pages in addendum #5). All materials subsequent to the first two pages in addenda #5 remain since they were originally supplied by the Complainant to the Respondent.

Property Description and Background:

(10) The subject is a 64,738 square foot (SF) multi-tenant commercial shopping centre on 6.10 acres (Ac.) of land at 700 -201 Southridge DR in the Town of Okotoks. The major tenant in the subject is a Sobeys grocery store occupying a total 45,307 SF, which is, in part, the focus of this hearing. The subject property is assessed using the “Income Approach to Value” methodology.

(11) With respect to Sobeys, a typical Okotoks rent rate of \$18 per SF is applied to the main floor 42,792 SF shopping area, and \$23 per SF for 2,515 SF of upper office mezzanine space. With respect to the remainder of the subject, typical rents ranging from \$32 per SF to \$35 per SF are applied. The entire subject is assessed using a typical 7.25% capitalization rate (cap rate), for a total assessed value of \$19,242,800.

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Issues:

(12) What is the correct typical rent rate to be applied to the 42,792 SF of Sobey's main floor area, and, the correct cap rate to be applied to the entire subject, when calculating the assessment of the subject?

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

(13) The Board finds that the Complainant relied almost exclusively on comparing the 42,792 SF of Sobey's main floor space in the subject, to grocery stores from both Airdrie and Calgary's various economic market zones, rather than those from the Town of Okotoks. The Complainant attempted to demonstrate that "superior" stores in Calgary are assessed \$3 per SF less than the subject's assessed \$18 per SF, arguing that this is inequitable. Although the Complainant verbally alluded at length to alleged similarities and superiorities of the Calgary sites versus the subject, the Complainant failed to conclusively demonstrate with market evidence, that either the Airdrie site, or any of the nine Calgary comparables, are in economic market zones that are in any respect, similar or identical to those that are typical of the Town of Okotoks. The Complainant therefore is in contravention of Section 467(3) of the Municipal Government Act (MGA).

(14) The Board finds that the Complainant provided insufficient market or related lease evidence from the Town of Okotoks to support its position in this appeal. As noted heretofore, the Complainant relied primarily on a largely unsupported "Grocery Leasing Analysis" for nine "A" quality stores located entirely within the City of Calgary, but failed to conclusively link that evidence to the Town of Okotoks market.

(15) The Board finds that the Complainant provided no market sales or related evidence from the Town of Okotoks to support a request that the assessed typical Okotoks cap rate of 7.25% used to assess the subject, should be increased to 7.50%. While the Complainant generally noted cap rates for various Okotoks property comparables, and posed that they were "inconsistent" from location to location, and from the subject, the Complainant provided broadly insufficient market evidence to demonstrate that the cap rates were incorrect for any of the Okotoks sites, including the subject.

Summary of Positions:

Complainant's Position:

(16) The Complainant argued that the Respondent incorrectly used the details of the recent sale of a nearby Safeway store for a reported \$13,000,000 to Sobey's, to support the subject's assessment of \$19,242,800. It was argued (C-5) that the sale was not representative of an "arm's length sale" since many of the principals were "related" through various "corporate links". Over an extended period of time, the Complainant identified the alleged corporate links. It was suggested therefore that the Board should not rely on the information provided by the Respondent regarding this point.

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(17) The Complainant also suggested that the subject is an older "standard" store that does not compare favourably in form or function with nine newer "aesthetically and functionally superior" City of Calgary grocery stores. The Complainant provided a listing of the nine Calgary stores on page 21 of 69 in C-1, and predominantly exterior photos (see C-4) of the nine stores, all located in the northwest, southwest, and southeast quadrants of the city. It was noted that the nine stores were identified as "A" Quality stores by the City of Calgary due to their newer age, recently renovated status, or "superior" locations. The Complainant clarified that it was essential to rely in this hearing on the Calgary stores and their lease data, since the leases are "more current" and "there are more of them".

(18) The Complainant noted that the "leasing years" for the nine Calgary stores ranged from 2009 to 2012, and the leases were therefore considered to be more representative of the current market lease rates for grocery stores of this magnitude and quality. While the Sobey's total leasable area in the subject is 45,307 SF, it was noted that the sizes of the nine Calgary stores ranged from 38,753 SF to 76,326 SF. The lease rates ranged from \$7 per SF (2012) for a site in Silverado in south-west Calgary, to \$26.45 per SF for a Quarry Park site in south-east Calgary. Based on these nine Calgary examples, the Complainant noted the median lease rate was \$15 per SF and the mean was \$14.62 per SF. The Complainant provided only the first page of each of the lease documents for the nine properties.

(19) The Complainant noted that the Respondent had compared the assessed lease rate of \$18 per SF for 42,792 SF of grocery area in the subject in Okotoks, to two south Calgary Sobey's stores. The store at 150 Millrise Bv. SW demonstrated a 2005 lease (start date) at \$18.10 per SF. The other store at 356 Cranston Rd. SE demonstrated a 2009 lease at \$19 per SF. The two locations were described by the Complainant as "two of the best locations in Calgary" but are only assessed at \$15 per SF by the City. Therefore, it was argued, the Respondent's comparison of the subject to only the two Calgary locations is not relevant. The Complainant argued on page 79 of C-3 that information provided by the Town appears to indicate that the Town developed its \$18 per SF lease rate from grocery stores in Calgary. Therefore the Complainant opted to use Calgary market data in this appeal.

(20) The Complainant also provided a sample 2011 lease from a 51,712 SF grocery store in the City of Airdrie, noting that the lease rate was \$6.61 per SF for 5 years. Also provided was a 2004, twenty year duration Okotoks lease for the Sobey's grocery store in the subject Cornerstone Shopping Centre. The lease rate was noted to be \$15.25 per SF but was considered by the Complainant to be a "dated" lease and therefore not reliable as an indicator of current market value.

(21) The Complainant provided a second matrix (p 22 of 69 C-1) containing seven "B" Quality grocery stores which are located in all four quadrants of the City of Calgary. The Complainant noted that the "leasing years" for the seven Calgary stores ranged from 2009 to 2013, and the leases were considered to be representative of current market lease rates for grocery stores of this magnitude and quality. While the Sobey's in the subject is a total 45,307 SF, the sizes of the seven Calgary stores ranged from 19,122 SF to 54,792 SF. The lease rates ranged from \$9 per SF (2009) for a site in Lakeview Plaza in south-west Calgary, to \$17 per SF for a Sunridge site in north-east Calgary. Based on these seven Calgary examples, the Complainant noted the median lease rate was \$13 per SF and the mean was \$12.86 per SF. The Complainant compared this data to the Airdrie and Okotoks leases noted in [22] above.

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(22) The Complainant argued that the evidence provided demonstrates that "superior" and relatively "inferior" grocery store sites in Calgary are assessed using a lesser "typical" rate of \$15 per SF whereas "lesser quality" grocery store sites in Okotoks are assessed at a "typical" \$18 per SF. The Complainant argued therefore that the subject is over-assessed when compared to City of Calgary grocery stores.

(23) The Complainant noted that two Okotoks strip centres were assessed using a 7.50% cap rate, and the "No Frills" grocery store location was assessed using a 7.75% cap rate. It was argued that this is inconsistent. The Complainant considered the 7.25% cap rate applied to the subject to be inequitable and argued that it should be increased to 7.50%.

(24) The Complainant provided an alternate assessment calculation for the subject on page 68 of C-1 and argued that based on a requested lease rate of \$15 per SF for the Sobeys, and a cap rate of 7.50% for the subject overall, the assessment of the subject should be reduced to \$8,447,900.

(25) The Complainant also verbally provided a second alternate assessment calculation for the subject arguing that should the Board not accept the arguments advanced for a 7.50% cap rate, the assessment should therefore be reduced to \$8,739,200 based solely on a \$15 per SF lease rate instead of the assessed \$18 per SF.

Respondent's Position:

(26) The Respondent questioned the Complainant's data sources regarding categorization of the nine "A" quality Calgary grocery stores (page 21 C-1), particularly the notation that some had been "renovated", and as a result were included in the "A" list. The Respondent inquired as to which properties had been renovated and to what degree, and whether or not the Complainant had documentary evidence related to this matter? It was noted that the Complainant was unable to provide any information regarding this point. The Respondent suggested that without this data, it was not possible to accurately compare the subject to any of the Complainant's nine comparables.

(27) The Respondent noted that in support of its per SF lease values for the nine "A" quality grocery properties, the Complainant provided only the first page of each lease, and nothing else, for each of the relevant lease documents. The Respondent noted that while the Complainant suggested it was impractical to bring every page for every lease, the Respondent argued that it was therefore not possible to examine the entire lease to determine whether or not "tenant inducements" played a role between the affected parties in setting any of the lease rates. The Respondent noted for example that the lease for the Sobeys store in Silverado (SW Calgary) is only \$7 per SF. Another lease for a Safeway store in Market Mall (NW Calgary) was \$8.40, both significantly lower than the \$15 per SF advanced by the Complainant as being "typical". The Respondent questioned the circumstances related to these leases. The Respondent also argued that most of the Complainant's leases are "dated" four year old leases and are hence unreliable.

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(28) The Respondent suggested that the \$7 and \$8.40 per SF leases were noticeably lower than most of the other seven leases used by the Complainant, and certainly significantly lower than the median lease rate of \$15 per SF preferred by the Complainant. The Respondent argued that the inclusion of these two leases alone in the Complainant's calculations of median value – particularly without “confirming” lease documentation, renders the results (\$15 per SF) of the Complainant's analysis to be questionable and unreliable. It was suggested that the lower value leases may be less-reliable “outliers”. The Respondent advanced similar questioning regarding the Safeway store in Shawnessy Village in Calgary, which is noted to be leased for \$10.47 per SF, a value less than a typical \$15 per SF.

(29) The Respondent argued with respect to the Complainant's lease data (p. 23 R-1) that:

“The assessor must value the fee simple estate without regard to the encumbrances of the leasehold interest. Real estate valuation theory has long held that in valuing the fee simple interests, market rent is the rental income to be used in the income approach”

(30) The Respondent provided several CARB decisions (addenda #4) in support of an argument (p 24 R-1) that:

“The Complainant provided lease renewals as support for the requested assessment, however the Board has found that renewal leases are not considered to be representative of economic” (market) “rents”.

(31) The Respondent argued that the Complainant provided minimal relevant market-based lease evidence, or market-based cap rate evidence specific to the Okotoks market zone. The Respondent argued therefore that the Complainant is relying primarily on an equity argument based solely on data from the City of Calgary. That being the case, it was argued that “Municipal Government Act” (MGA) Section 467(3) is applicable, with particular emphasis on part (3)(c):

“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.”

(32) The Respondent argued that using the same rationale, Section 2 of Alberta Regulation 220/2004 being “*Matters Relating To Assessment and Taxation Regulation*” (MRAT) is also relevant:

“Section2 An assessment of property based on market value must be prepared using mass appraisal, must be an estimate of the value of the fee simple estate in the property, and must reflect typical market conditions for properties similar to that property.”

(33) The Respondent referenced and provided copies of an authoritative Appraisal manual, and several MGB Board Orders and CARB Decisions in support of this position as follows:

- “The Appraisal of Real Estate – Canadian Edition”, (page 425)
- CARB 0238-04-2011 (page 3)
- MGB Board Order BO 038/06 (page 7)
- CARB 1451-2011-P (pages 4,5)
- CARB 238-04-2011-M (page 3)

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(34) The Respondent noted that the Complainant argues the Alberta Land Titles transfer of a nearby Safeway store on October 29, 2013 from Safeway to Sobeys for \$13,000,000 (R-1 Addendum #7) is not an "arms length" transaction and should therefore be disregarded for comparative assessment purposes. The Respondent argued that the Complainant provided no definitive evidence (i.e. a "paper trail") that this argument is correct. The Respondent also argued that the Complainant provided no third-party independent market value appraisals for the Safeway sale relative to the transaction to demonstrate that its reported value is invalid.

(35) The Respondent clarified that typically, companies engaged in major transactions such as the Sobeys/Safeway purchase, will conduct their "due diligence", which generally includes independent professional appraisals of affected properties. The Respondent noted (copy provided) that the sworn "Affidavit of Value" (R-1 Addendum #7) attached to the Alberta Land Titles documents related to the transfer of the subject, clearly identifies the value of the transaction at \$13,000,000 cash. The Respondent argued that the sworn transfer value of this property comparable, supports the assessment of the subject, and the input values used to assess the area leased by Sobeys.

(36) The Respondent provided a matrix (page 28 R-1) containing the assessment values and input details for the subject and four equity comparable properties from the Town of Okotoks. It was noted that two of the four comparable properties are typical full-service grocery stores (No Frills; Ssfeway) whereas the remaining two (WalMart; Costco) similarly provide extensive grocery store products and services. The Respondent noted that all five properties in the Town were assessed using similar parameters and values such as is required under Section 467(3) of the MGA. The Respondent requested that the assessment be confirmed at \$19,242,800.

Findings and Reasons:

(37) The Board finds that in accordance with section 467(3) of the MGA, the Complainant provided insufficient information to demonstrate that the equity comparables it provided are representative of the Okotoks market. Consequently the Complainant failed to demonstrate that the assessment is inequitable relative to other similar properties in the Town.

(38) The Board finds that the Complainant provided only the first page of leasing documents for each of the nine properties it relied on. This is insufficient documentation for the Board and the Respondent to confirm that the lease values used by the Complainant are valid, and that the requested \$15 per SF lease rate for the Sobeys component of the subject is appropriate.

(39) The Board finds from the evidence presented that it concurs with the Respondent that the Complainant relied on a multitude of lease renewals from Calgary properties to arrive at a preferred \$15 per SF lease value. Accepted appraisal practice deems that lease renewals are not acceptable inputs, a principle endorsed by the MGB in Board Orders BO 021/100 and BO 038/06, and in CARB 0238-04-2011.

(40) The Board finds that the Complainant, while arguing that the sale of the nearby Safeway store for \$13,000,000 is not an "arms length" sale and should be disregarded as a property comparable, provided no documentation (e.g. independent appraisal) to confirm precisely what the market value of the subject's sale should in fact, be.

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(41) The Board finds that the sworn "Affidavit of Value" for \$13,000,000 (cash) attached to the Alberta Land Titles documents regarding the nearby Safeway sale, demonstrates that its value for comparative assessment purposes is valid, and offers additional support for the assessment of the subject.

(42) The Board finds from the evidence that the Respondent assessed the subject in accordance with the requirements and procedures identified in the MGA and MRAT, contrary to the assertions of the Complainant. The Respondent adhered to Mass Appraisal techniques and requirements to assess similar properties in a similar manner, including the subject, wholly within the Town of Okotoks. The Respondent's chart on page 28 of R-1 confirms the same.

(43) The Board finds that unlike the Complainant, the Respondent attended and provided extensive photographic evidence of the interior and exterior of the subject and the four property comparables to which the subject was compared, all in the Town of Okotoks. The Complainant provided primarily exterior photos of nine Calgary comparables. This demonstrates to the Board that the Respondent acquired a personal knowledge of each of the properties it selected, in support of the Respondent's application of knowledge and experience used to assess the subject – all in accordance with accepted appraisal theory.

(44) The Board finds that the Complainant provided insufficient market or sales information from the Town of Okotoks to demonstrate that the 7.25% cap rate used to assess the subject is incorrect, or that the cap rate used to assess the subject and other similar Town properties, is inconsistently applied as alleged.


(45) The Board finds, given the evidence and argument adduced at this hearing by the Respondent, that the assessment is fair, correct and equitable.

Board's Decision:

(46) The assessment is **confirmed** at \$19,242,800.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 31st day of October, 2014.



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 – Preliminary Issue
3. C-3	Complainant Disclosure
4. C-4	Complainant Disclosure
5. C-5	Complainant Disclosure
6. C-6	Complainant Disclosure - Rebuttal
7. 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-Issues
CARB	Commercial	Community Shopping Centre	Market value	Rent/cap rate