

November 1, 2012

Christine VanStaden
Altus Group
1200, 333 11th Avenue SW
CALGARY, AB T2R 1L9

E-mail: CalgaryTax@AltusGroup.com

Dear Ms. VanStaden:

Re: Composite Assessment Review Board Hearing on Roll Number 0051930 &
0051940

Attached please find the Okotoks Composite Assessment Review Board Order for the hearing held regarding the above-noted roll number.

Please do not hesitate to contact me if you require any further information.

Sincerely,



Linda Turnbull
Assessment Review Board Clerk
lturnbull@okotoks.ca

c: Town of Okotoks Assessment Services
Minister of Municipal Affairs



OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/06/2012-M

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

BETWEEN:

Okotoks Air Ranch Inc. - Complainant

and

The Town of Okotoks - Respondent

BEFORE:

William Gagnon, Presiding Officer
Lyle Buchholz, Member
Dennis Rasmussen, Member

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

Roll Number(s)	Address	Assessment
0051930	32 Ranch Road	\$300,000
0051940	2 Billy Haynes Trail	\$342,000

The complaints were heard by the Composite Assessment Review Board on the 4th day of October, 2012 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group (Agent for the Complainant) - Christine VanStaden

Appearing on behalf of the Respondent:

- Paul Huskinson, Assessor, Town of Okotoks

Attending for the ARB:

- Dianne Scott, ARB Assistant

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Procedural/Jurisdictional Matters:

Disclosure under Section 299

At the outset of the hearing, the Complainant withdrew concerns which she had raised prior to the hearing concerning disclosure and exclusion of evidence under sections 299 and 300 of the Act. The Complainant advised the Board that all information necessary to proceed with the hearing had been disclosed and properly exchanged by the Assessor. This aspect of the complaint was abandoned.

Order for Non-Disclosure or "sealing" of Evidence

During the course of the hearing, the Complainant requested that the Board rule two pieces of evidence be sealed and subject to a non-disclosure ruling in respect to both roll numbers. The first piece of evidence consisted of what purports to be an email from a representative of the Complainant to Altus Group setting out the monthly fee charged to persons who have made arrangements to lease, park, or 'tie-down' their aircraft on one or both of the subject parcels. This evidence is relevant to the Complainant's argument concerning an income approach to value. The second consists of what purports to be an "offer to purchase" from an arms-length party for one of the parking areas on one of the subject parcels, which the Complainant says is relevant to the market value of the subject properties.

In considering orders for non-disclosure, the Board is concerned about the balance between transparency and confidentiality on one hand, and the relevance and necessity to use information provided by the parties in our analysis. All hearings before the Board ought to be conducted in as transparent a manner as possible to allow reasonable assurance to the general public that decisions of the Board are not made in secret, or for reasons that are not fully disclosed. At the same time, evidence that is confidential ought to be protected if disclosure might result in harm to any of the parties from a Board hearing. The conflict arises when information that is confidential by its nature and would cause harm if disclosed is highly relevant, probative and essential to the decision making process of the Board.

The Board's primary concern therefore is for the relevance or probative value of the evidence.

The Complainant says that lease or parking rates are by their nature confidential. No further support was given for this position. The argument is that the "offer to purchase" is also confidential as it discloses the name of the potential purchaser, the interest that person hopes to acquire and the amount that he or she is prepared to pay.

The Complainant told the Board that each of the subject parcels had been further subdivided into leased or rented parking spaces which were akin to a condominium and that some of these 'condominium' units were owned by third parties, and others held by the owner of the subject properties. There was no evidence presented, however, to show that these spaces were in fact condominium units and no proof of subdivision by

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condominium title or otherwise was provided. The Complainant said that there were arrangements with a number of parties whereby they could occupy these spaces but she provided no direct evidence as to the nature of the interest granted by the property owner or held by those parties. No site plan was presented to show the number or allocation of space to lessees or parking customers. No lease agreements were submitted as proof of a lease arrangement. There was no evidence as to the term of each arrangement and whether they were uniform or fashioned to suit the individual needs of persons who wished to park their aircraft on the site. The Complainant did not provide evidence of ownership or any encumbrances on title whether by lease, caveat or otherwise.

Based on the evidence, or lack thereof, the Board finds that the monthly fee charged by the owner to people who occupy various areas is, at best, akin to a parking fee. Similarly, the interest granted to a party who pays the fee is akin to a right to park. Nothing in either of these pieces of evidence suggest that anyone other than the registered owner of the subject parcel owns anything, or indeed has any rights at all in the subject parcels except perhaps to park. As such, the Board finds that evidence of a monthly fee is largely irrelevant. Accordingly, on the basis of relevance alone, the Board finds this evidence of little or no value, even though it is crucial to the income approach to value which the Complainant proposes to use.

Similarly, the offer to purchase provides no specific information as to the size, location of the space, nor the nature of the interest that the purchaser hopes to acquire. While the offer states a price that the purchaser is willing to pay, it does not specify the subject matter of the so-called "purchase". In the absence of further evidence, the offer to purchase is not useful to determine market value. The Board finds that this evidence is of little or no relevance even though it is crucial to the Complainant's assertion that the amount set out in the offer times the theoretical number of spaces equals the market value of the subject parcels.

The Board finds that neither of these pieces of evidence alone is relevant or able to provide any probative value to the Board in this matter. The Board does however accept the Complainant's assertion that the information contained in them is confidential and might cause harm if disclosed. The Board therefore orders that the information contained in these two pieces of evidence be sealed and not disclosed to any party.

Property Description:

This is a complaint by Altus Group Limited on behalf of Okotoks Air Ranch Inc., the owner of two parcels of property identified respectively as Roll Number 0051930 (32 Ranch Road), and Roll Number 0051940 (2 Billy Haynes Trail). Both are undeveloped lots located in the area generally described as Okotoks Air Ranch, Okotoks, Alberta which is essentially a privately owned airport surrounded by a number of independently owned properties or bare land condominiums.

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Background:

Both properties are vacant fields adjacent to the airport which are used to tie-down small aircraft which presumably will access the air strip. Both properties are of irregular shape, but otherwise there is nothing to impede their development. Both are zoned Aerodrome (AD), which allows for the airport facility as well as a range of other light industrial, commercial and entertainment/restaurant uses. The Complainant says that the adjacent air strip and the subject properties are essentially common property to the condominium and privately-owned properties which surround it and that the value of the overall complex is reflected in the assessed value of the surrounding properties and condominium units and ought not to be attributed to the subject properties.

Issues and Summary of Positions of the Parties:

The only issue under discussion is the correctness of the assessment. The parties agree that the subject parcels are somewhat unique. There are no direct comparable properties and valuation on the income approach is problematic because of the nature in which income is derived. A cost approach to value is not very helpful either, since the properties are essentially undeveloped. An appeal was taken to this Board for the 2011 assessment year. The Board reduced the assessments from approximately \$450,000 each to their current levels based on a discount from market values of comparable (light industrial) properties because of the peculiar zoning criteria associated with air strips and ancillary uses. This year the Respondent assessed the properties at last year's values to reflect the Board's ruling for that taxation year, but undertook an independent analysis for 2012 to confirm those values. The Respondent says that the current values are justified based on comparable sales.

The Complainant alleges that the assessments of the subject properties are in excess of market value. The assessment on Roll Number 0051930 is \$300,000. In written submissions the Complainant requests that the assessed value be reduced by the Board to \$49,800. However in her closing submissions, the Complainant requested a reduction to only \$75,000. The assessment on Roll Number 0051940 is \$342,000 and in written submissions the Complainant requested the Board reduce this to \$57,000 while verbally she indicated a value of \$110,000. In either case, the requests are considerable. The onus is on the Complainant to persuade the Board that there is sufficient evidence to justify these reductions or to alter the assessment. The Respondent says that the Complainant has failed to discharge this onus.

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Board's Findings / Reasons and Decision:

In its ruling on preliminary matters pertaining to non-disclosure of evidence, the Board made a number of findings that influence whether the onus has been met. The Board finds that the offer to purchase provides no sound basis for evidence of market value and that evidence of monthly (rental) fees provide no evidentiary basis for valuation on an income approach. The reasons for these findings are as set out above. Both pieces of evidence are central to the Complainant's case but both have been ruled to be of little or no evidentiary value.

The Board must then look to other evidence in support of the Complainant's request. However, there was little or no additional evidence submitted on which the Board could rely.

In support of an income approach, the Complainant relied on monthly 'rent' revenues which the Board has found to be unreliable or non-typical, and then applied a capitalization rate higher than that applied to similar properties in Calgary because the "risk" associated with these subject properties were higher. There is no evidence of how the cap rate was derived except to say that it was based on "experience". The Board finds insufficient support for the derivation of the cap rate. Accordingly, there is insufficient evidence to persuade the Board that the assessment is in error based on the income approach.

The Complainant provided evidence and argument that the highest and best use of the subject properties is their current use; namely, as parking spaces for aircraft which intend to use the adjacent airstrip. The Complainant stated that the subject properties are encumbered by the requirement they be used as such, which precludes any other use.

The Complainant provided no evidence to support this argument. No applications have been made by the owner to further develop the subject properties. There is no evidence that the title to the subject properties is encumbered by any requirement that the land remain in its current use, nor does the current zoning which restricts uses to airport or ancillary uses necessarily prohibit all kinds of future development. Indeed, the current zoning for the subject properties reflects in many ways the uses which may be made of other comparable properties which are not subject to the Aerodrome designation but may be used for light industrial use. The Complainant says that further development would be opposed by neighbours, but provided no evidence of any application having been made or of any opposition to it by affected parties. The Board finds that it is speculative whether the subject properties might be further developed or whether proposed development would be prohibited or refused.

The obligation is on the Complainant to provide sufficient credible evidence to raise a prima facie case to suggest that the Respondent's assessment is either incorrect or inequitable. The Board finds that there is insufficient evidence to support the Complainant's requests and that a prima facie case has not been made. Accordingly, the Board finds no reason to disrupt the assessment values as set by the Respondent.

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The Board is of the opinion that the best evidence of value is that provided by the Respondent, which is based on relevant sales of comparable properties discounted to reflect the concerns raised by this Board in its decision concerning the 2011 taxation year, namely, a discount from comparable properties zoned for similar uses to reflect some diminution of value of the subject properties associated with Aerodrome (AD) zoning.

A significant reduction in assessed value was awarded by this Board for the 2011 taxation year for that reason, and there is no evidence before this Board to indicate that anything substantive has changed in the 2012 taxation year to affect the assessed value. In view of the forgoing, the Board finds the assessed values as follows:

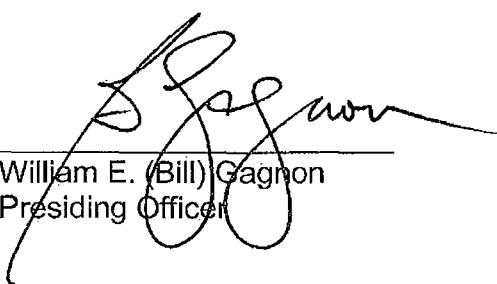
Roll Number 0051930: The Board's decision is to confirm the subject property's assessed value at \$300,000.

Roll Number 0051940: The Board's decision is to confirm the subject property's assessed value at \$342,000

No submissions in respect to costs of this hearing have been made by the parties and accordingly none will be ordered.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 31st day of October, 2012.



William E. (Bill) Gagnon
Presiding Officer

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Appendix "A" – Documents Received and Considered by the CARB

EXHIBIT

C-1	EVIDENCE SUBMISSION OF COMPLAINANT TO THE 2012 ASSESSMENT REVIEW BOARD RE: ROLL #0051930
C-2	EVIDENCE SUBMISSION OF COMPLAINANT TO THE 2012 ASSESSMENT REVIEW BOARD RE: ROLL #0051940
R-1	TOWN OF OKOTOKS ASSESSMENT BRIEF
R-2	ADDENDUM 1 – OKOTOKS LAND USE REGULATIONS AERODROME (AD)
R-3	ADDENDUM 2 – OKOTOKS LAND USE GUIDELINES, BUSINESS INDUSTRIAL DISTRICT
R-4	ADDENDUM 3 –OKOTOKS LAND USE GUIDELINES, SOUTH BUSINESS INDUSTRIAL DISTRICT (I-1S)
R-5	ADDENDUM 4 – OKOTOKS LAND USE GUIDELINES, GENERAL INDUSTRIAL DISTRICT
R-6	ADDENDUM 5 – OKOTOKS LAND USE GUIDELINES, GENERAL INDUSTRIAL DISTRICT (I-3)
