

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/07/2014

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:

CP Reit Alberta Properties Ltd. (as represented by Altus Group) - 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
0032580	9 Sandstone Gate	\$6,747,100

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: (note: the parties requested that the evidence and argument regarding this matter be carried over to this file from file 0038100)

(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 19 and 21 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 19 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 19 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 21 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 21 of R-1, the Respondent argued that the "Sobeys" 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 21 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 19. The chart on page 21 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 30,761 square foot (SF) "No Frills" grocery store built in 1998 on 2.49 acres (Ac.) of land, at 9 Sandstone Gate in the Town of Okotoks. The subject has a 308 SF gas bar (originally identified as 1,000 SF) assessed at \$16 per SF; 709 SF of mezzanine office at \$12 per SF; 1,410 SF of access to the underground parkade at \$12 per SF; and 30,761 SF of retail grocery space at \$16 per SF. It is assessed using the "Income Approach to Value" methodology for a total assessed value of \$6,747,100.

(11) The Respondent recommends that the assessment calculation be corrected by amending the gas bar area to 308 SF and reducing the assessment to \$6,615,400.

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Issues:

(12) What is the correct typical rent rate to be applied to each of the 30,761 SF of grocery space, and the 1,410 SF of parkade access, when calculating the assessment of the subject?

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

(13) The Board finds that the Complainant provided and relied almost exclusively on comparing the subject to "A" and "B" quality grocery stores from 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 less than the subject's assessed \$16 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 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 seven "B" 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 relevant evidence from the Town of Okotoks or anywhere, to support a request that the \$12 per SF used to assess the 1,410 SF access to the subject's parkade, should be reduced to zero dollars. While the Complainant generally argued that elevators are not typically assessed, and suggested that the parkade access area should be considered in the same manner as an elevator, the Complainant provided no market or other relevant evidence to support this argument.

Summary of Positions:

Complainant's Position:

(16) The Complainant suggested that, as its name implies, the subject is an older "below-standard" grocery store that does not compare favourably in form or function with seven newer "aesthetically and functionally superior" City of Calgary "B" quality grocery stores. The Complainant had provided a listing of nine "A" quality Calgary grocery stores but determined that they were not fully comparable to the subject. The seven "B" quality Calgary stores on page 36 of 73 in C-1, are variously located in all four quadrants of the city. It was noted that the seven stores were identified as "B" Quality (average) stores by the City of Calgary due to their age, location, and/or condition. 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" than in Okotoks.

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(17) The Complainant noted that the "leasing years" for the seven Calgary stores ranged from 2009 to 2013, and the leases were therefore considered to be more representative of the current market lease rates for grocery stores of this quality. While the subject is a total 31,470 SF (grocery + office) it was noted that the sizes of the seven Calgary stores ranged from 19,122 SF to 54,792 SF. Therefore it was considered that they were similar to the subject in terms of size.

(18) The Complainant noted that the lease rates for the seven stores ranged from \$9.00 per SF (2009) for a site in Lakeview Plaza in south-west Calgary, to \$17.00 per SF for a Sunridge Way site in north-east Calgary. Based on these seven Calgary examples, the Complainant noted the median lease rate was \$13.00 per SF and the mean was \$12.86 per SF. The Complainant provided no lease documents in support of the lease values listed for the seven properties.

(19) The Complainant also provided data regarding an apparent 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 a 42,852 SF Sobeys grocery store in the 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.

(20) The Complainant argued that the evidence provided demonstrates that "superior" and relatively "inferior" sites in Calgary are assessed using a lesser "typical" rate of \$15 per SF whereas a "lesser quality" site in Okotoks such as the subject, is assessed at a "typical" \$16 per SF. The Complainant argued therefore that the subject is over-assessed when compared to City of Calgary grocery stores.

(21) The Complainant argued that the market value of property can only be determined from "space that will generate income". The Complainant argued that the ramp access space to the underground parkade under the main building cannot be used to generate income and therefore its value is zero. However, the Complainant provided no market, or sufficient alternate evidence to support this statement and argument.

(22) The Complainant provided an alternate assessment calculation for the subject on page 38 of C-1 (and again on page 72) and argued that based on a requested lease rate of \$13 per SF, and a zero dollar value for 1,410 SF of parkade access, the assessment of the subject should be reduced to \$5,291,300.

Respondent's Position:

(23) The Respondent questioned the Complainant's data sources regarding categorization of the nine "A" quality Calgary grocery stores (page 35 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.

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(24) The Respondent noted that the Complainant was unable to supply copies of leases for the seven "B" quality Calgary property comparables it advanced, and argued therefore that this data supplied by the Complainant is unsupported and unreliable. The Respondent inquired as to why comparative lease data was not supplied by the Complainant from other "No Frills" stores? The Complainant clarified that only one other "No Frills" store is leased and it is in the NE Calgary community of Temple. It was not considered relevant. The Respondent argued that the Complainant provided no relevant market evidence to support a request for \$13 per SF for the grocery area of the subject.

(25) The Respondent provided a matrix containing four other equity comparable properties that were either typical grocery stores (Sobeys; Safeway) or were "big box" stores with a large grocery component (Costco; WalMart) – all of which were compared to the subject. The Respondent noted the individual and collective characteristics of each property; the assessment details applicable to each, and compared them to the subject. It was argued that all five Okotoks sites listed in the chart had been assessed in an equitable manner in accordance with relevant Mass Appraisal legislation.

(26) The Respondent clarified that the subject's underground parkade was essential to meeting the Town by-law parking requirements when the owners decided to build the subject on the current site. Therefore, it was argued, the parkade and related appurtenances such as the disputed access structure, are essential to the financial success and simple day to day operation of the subject. Therefore it has value which has been assessed in accordance with accepted appraisal practice.

(27) The Respondent rejected the Complainant's argument that the parkade access structure is akin to an elevator and should not be assessed, noting that the Complainant provided no market or other definitive evidence to support the verbal claim. The Respondent noted that seasonal space (e.g. garden centre) is typically assessed, and in some respects, the parkade access is similar. The Respondent clarified that this procedure is not only consistent with real estate valuation practices, but has also been accepted by the MGB in Board Order BO 087/10. In addition, the Respondent argued that provincial legislation requires that all spaces must be assessed pursuant to Sections 284 (1)(j); 284(1)(r); and 293(1) of the Municipal Government Act.

(28) The Respondent also noted that mezzanine storage space is also typically assessed, and there is a strong correlation between this type of space and the functions it provides to business, and the subject's parkade access. The Respondent provided a list and extensive coloured photos of nine properties (pg 47) containing assessed mezzanine spaces and compared them to the subject's parkade access.

(29) The Respondent argued that the Complainant provided minimal relevant market-based lease 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."

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(30) 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:

"Section 2 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."

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

- "The Appraisal of Real Estate – Canadian Edition"
- CARB 0238-04-2011
- MGB Board Order BO 087/10
- MGB Board Order BO 111/10

(32) The Respondent clarified that the gas bar had originally been assessed as having 1,000 SF at a typical value of \$16 per SF. However, in subsequent review and measurement, it was noted the gas bar occupied only 308 SF. In re-calculating the assessment, the Respondent clarified that when the correct 308 SF at \$16 per SF is factored into the assessment calculation, the subject's value is \$6,615,400 (p 5 R-1). The Respondent requested the Board to reject the Complainant's position, and to correct and reduce the assessment to \$6,615,400.

Findings and Reasons:

(33) The Board finds that the Complainant provided and relied almost exclusively on comparing the subject to "A" and "B" quality grocery stores from 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 less than the subject's assessed \$16 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 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.

(34) The Board finds that the Complainant therefore is in contravention of Section 467(3) of the Municipal Government Act (MGA) which states:

"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.

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(35) 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 seven "B" quality stores located entirely within the City of Calgary, but failed to conclusively link that evidence to the Town of Okotoks market.

(36) The Board finds that the Complainant provided no market sales or other definitive evidence from the Town of Okotoks or anywhere, to support a request that the \$12 per SF used to assess the 1,410 SF access to the subject's parkade, should be reduced to zero dollars. While the Complainant generally argued that elevators are not typically assessed, and suggested that the parkade access area should be considered in the same manner as an elevator, the Complainant provided no market or other definitive evidence to support this argument.

(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 either incorrect or inequitable relative to other similar properties in the Town.

(38) The Board finds that the Complainant provided insufficient leasing documents for each of the nine "A" quality properties, and the seven "B" quality Calgary leases 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 \$13 per SF lease rate is appropriate.

(39) The Board finds 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 21 of R-1 confirms the same.

(40) 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, by contrast, provided primarily exterior photos of its comparables, largely nine Calgary comparables. This demonstrates to the Board that the Respondent acquired a personal knowledge of each of the Okotoks properties it selected, all in support of the Respondent's application of knowledge and experience used to assess the subject – all in accordance with accepted appraisal theory.

(41) The Board finds that the Complainant provided insufficient market, or any other definitive information from the Town of Okotoks to demonstrate that the \$12 per SF used to assess the parkade access in the subject is incorrect, or inconsistently applied as alleged. The Complainant provided no market evidence to demonstrate that the assessed value of the parkade access is zero dollars.

(42) The Board finds that the Respondent provided considerable relevant information and argument, including comparative examples (e.g. mezzanines; garden centres) to support its position that the parkade access in the subject is, and should be assessable in the manner of other similar spaces in the Town of Okotoks. The Board accepts that the methodologies and rationale used by the Respondent to assess the parkade access accords with the MGA and MRAT, and is equitable.

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

Board's Decision:

(44) The assessment is corrected as requested by the Respondent in (32) above and reduced to \$6,615,400.

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	Grocery store	Market value	Rent rate