

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/10/2010-M

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Composite Assessment Review Board (CARB) pursuant to the *Municipal Government Act (Act)*, Chapter M-26.1, Section 460(4).

BETWEEN:

1528670 Ontario Ltd., Complainant

- and -

The Town of Okotoks, Respondent

BEFORE:

P. Petry, Presiding Officer
D. Howard, Member
D. Rasmussen, 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 and entered in the 2010 Assessment Roll as follows:

| Roll Number | Address | Assessment |
|-----------------------------|--------------------------|---------------------|
| Roll Number: 0056750 | 47 Riverside Gate | \$17,257,000 |

This complaint was heard on the 20th day of October, 2010 at the Town of Okotoks Council Chambers at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group Limited (Agent for the Complainant) – B. Bickford

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the ARB – Linda Turnbull, ARB Clerk and Diane Scott, Assistant

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Property Description and Background:

The subject property is a 134 unit retirement complex located on the north side of the Sheep River at 47 Riverside Gate near downtown Okotoks. This complex was still under construction as of December 31, 2009 and the percentage of completion as of this date is one of the matters in dispute. The Complainant also argues that the assessment of the subject property is not equitable considering the assessments of similar properties. The subject property was sold in the spring of 2010 for the sum of \$18,995,000 and the transfer respecting this transaction was registered on May 5, 2010.

Issues:

1. What percentage of completion had occurred by December 31, 2009?
2. In applying the income valuation approach, what rental rates should be used to reflect the market value of the fee simple estate?
3. What is a fair and equitable value for the subject as of the valuation date July 1, 2009 considering the property's physical condition and characteristics as of December 31, 2009?

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

1. The subject improvement was approximately 80% complete as of December 31, 2009.
2. Projected monthly rental rates of \$1,000 for a bachelor unit, \$1,200 for a one bedroom unit and \$1,400 for a two bedroom unit are found to be appropriate.
3. The 2010 assessed value of \$17,257,000 is found to be correct and equitable for the subject property.

Several other issues were raised in the Complaint filed with the Assessment Review Board (ARB) for 2010. The only issues that the parties brought forward in the hearing of this matter before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised on the complaint form.

Summary of the Partys' Positions

Complainant:

The Complainant provided a letter from the owner's Vice President of Taxation stating that a review of the property had been done during the due diligence process and the comment from the building inspection was that the exterior was approximately 90% complete and the interior was approximately 60% complete as of December 3, 2009. Given these two estimates, a conclusion had been made that overall the building was about 73% complete and the CARB was urged to accept this number when determining the market value for the subject. If this change were the only change made it would result in a value of \$16,008,000.

The Complainant stated that the subject property is one of a kind in Okotoks and therefore an analysis of other properties owned by the same owner in Calgary was done to address the question of equity. The Complainant submitted a chart showing 15 retirement residential properties in Calgary that were assessed at an average value of \$88,931 per unit with a median value of \$92,117 per unit. These values are considerably lower than the assessed value of the subject at \$133,775 per unit at 80% complete and a projected value of \$167,219 at 100% complete. The construction dates for these comparables ranged from 1988 to 2007 and the average number of units per complex was 131, very close to the subject at 134 units. Using a per unit value of \$92,000 and 134 units the Complainant proposed new values of \$9,805,000 at 73% complete or \$10,459,000 at 80% complete.

There had been some discussion between the Complainant and the Respondent with respect to rental rates that would reflect the value of the real estate only for the subject property. The Complainant suggested that the rates used by the Respondent are too high based on an analysis of a number of listings for comparable units in Okotoks. Based on these listings and asking rents, the Complainant proposed that bachelor units should be at a monthly rate of \$800, one bedroom units at \$1,000 and two bedroom units at \$1,200. If these values were applied without changing other values in the Respondent's pro-forma including the GIM of 11.25, a value of \$14,507,000 results. The Complainant suggested that the correct and equitable value for the subject is between this value and the \$9,800,000 produced through the equity review.

Respondent:

The Respondent indicated that an inquiry had been made with the building inspector as to what percentage of the subject improvement was complete. The building inspector and the site superintendant had inspected the project in mid November 2009 and concluded that the improvement was between 75% and 85% complete at that time. Very little work, if any, was done after that date. The Respondent also submitted a September 1, 2010 inspection report undertaken by Norr Architects and Planners which estimates that the project is 75% to 80% complete. The Respondent indicated that no work had

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been done between the December 31, 2009 valuation date and the time of this inspection. It was argued that the building inspector's estimate and the Norr Report both support the estimated 80% completion number used in arriving at the subject's assessment.

With respect to the equity argument advanced by the Complainant, the Respondent argued that any comparisons done to show assessment inequity must be of properties within the municipality. Also the information brought forward by the Complainant is insufficient to determine similarity.

The Respondent indicated that the rental rates used to develop the assessment take into account discussions with the Complainant, the location and amenities offered by the subject and the fact that it is a new building near the core of Okotoks. The assessment appears very conservative in light of the sale of the subject property at a value of \$18,995,000 in May 2010. The project was in trouble and essentially stalled and the vendor would have been motivated to make this sale. The value, even though it should be considered to be below market, still supports the assessed value of \$17,257,000. The Respondent requested that the CARB confirm the assessment.

Findings and Reasons:

The CARB reviewed the various indications as to the percentage of completion for the improvement as of December 31, 2009. The Complainant's information is reported by an individual not involved with developing the estimate. This estimate may have carried greater weight had it come directly from the contractor with some background as to how it was determined. The CARB placed greatest weight on the Norr Report as it had been done for the new owners and by a professional group who presumably have reasonable expertise in this area. The building inspector's estimate also supported the estimated 80% complete as well. The CARB therefore finds that the improvement was approximately 80% complete as of December 31, 2009.

With respect to the question of equity, the Complainant indicated that the subject is one of a kind in Okotoks. On matters of equity the Respondent is correct that equity must be measured by comparison of similar properties within the municipality. Section 467(3) the Municipal Government Act (Act) provides that an assessment review board must not alter an assessment that is fair and equitable taking into consideration the assessments of similar properties within the same municipality. Notwithstanding the foregoing, the Complainant's chart provided insufficient information to show that the comparables selected were similar to the subject property. Through questions it seemed clear that the subject land value is substantially higher than the Complainant's estimated value of lands occupied by the comparables in Calgary. Many other characteristics must be known and potentially adjusted for when considering similarity such as suite mix, suite

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size, amenities, location and age. Based on these reasons the CARB found that it could not adopt the Complainant's argument respecting fairness and equity.

On the question of rental rates the CARB found the approach used by the Complainant not to be convincing. The listings were too few, not of units similar to the subject and there had been no analysis of this data. Therefore the CARB did not place weight on the Complainant's amended income pro-forma.

While the CARB understands that the sale of the subject is post-facto it nevertheless is significant. The sale should be considered as a duress sale very likely under the typical market value given the circumstances surrounding the sale. The general market has been either stable or in decline from the valuation date of July 1, 2009 and the date of this sale in May 2010. The sale of the subject property therefore has been considered by the CARB as being an important and relevant confirmation that the assessment of the subject is correct, fair and equitable.

Decision Summary

The decision of the CARB is to confirm the assessed value of the subject at \$17,257,000.

No cost to either party.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 2nd day of November 2010.



Paul G. Petry
Presiding Officer

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;*

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- (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*