

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/11/2014

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:

Walmart Canada Corp. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

Wayne Kipp, Presiding Officer
Dennis Rasmussen, Member
Ron 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
0058260	500 201 Southridge Drive	\$32,116,200

This complaint was heard on the 23rd day of October, 2014 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Susan Trylinski, Legal Counsel, Municipal Counsellors
- Hugh Ham, Legal Counsel, Municipal Counsellors
- David Nishi-Beckingham, Agent, AEC Property Tax Solutions
- Arunan Sivalingam, Observer, AEC Property Tax Solutions

Appearing on behalf of the Respondent:

- Paul Huskinson, Assessor, Town of Okotoks

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Preliminary Matters:

There are similarities in the issues, evidence and argument between this complaint and the one for Roll 0094110 (10, 101 Southbank Boulevard – Home Depot Holdings Inc. For this reason, the parties requested leave to carry forward oral testimony, argument, questions and answers. It was noted that there are complete copies of disclosure documents for each file and it is only the oral presentation that needs to be expressed just once. The CARB agreed to reduce repetition of oral presentations for the two complaints and left it to the parties to identify which testimony should be applicable to both complaints.

There were no preliminary or jurisdictional matters to be decided by the CARB.

The merit hearing proceeded.

Property Description and Background:

The property that is the subject of this assessment complaint hearing is the Walmart Supercentre store located at 500, 201 Southridge Drive in south Okotoks. The 164,362 square foot building, built in 2002, occupies an 11.67 acre commercial site. Within the building are areas for grocery retail, dry goods retail, a pharmacy, a garden centre and spaces for licensees: Mr. Lube, McDonalds, Regal Nails, Smart Style Hair Salon and Visions Eyewear.

The property is assessed using an income approach. A typical rent rate of \$14.00 per square foot is applied to the total floor area occupied by the licensees, the garden centre and the dry goods retail area. For the grocery retail area of 36,404 square feet, a rent rate of \$18.00 per square foot is applied. A vacancy allowance of 2.00 percent is deducted as are estimated operating costs on vacant space measured at \$6.50 per square foot. The deduction of a 2.00 percent non-recoverable operating expense allowance, the estimated net operating income is \$2,328,428. An overall capitalization rate of 7.25 percent is applied to arrive at the \$32,116,248 value which is truncated to the \$32,116,200 assessment.

Issues:

The Assessment Review Board Complaint form was filed on May 5, 2014 by AEC Property Tax Solutions on behalf of Home Depot Holdings Inc., the “assessed person.” *Section 4 – Complaint Information* has a check mark in the boxes for #3 an assessment amount, #4 an assessment class, #6 the type of property and #7 the type of improvement.

In *Section 5 – Reason(s) for Complaint*, the Complainant set out a number of reasons for the complaint.

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At the hearing, the Complainant pursued the following issues:

The assessment is too high. Market and assessment evidence from surrounding municipalities supports an \$11.00 per square foot typical rent rate. The 2013 vacancy rate of 3.00 percent should be maintained for 2014 and the capitalization rate should be increased to 7.50 percent.

Complaint's Requested Assessment:

\$22,488,200, based on changes to rent, vacancy, operating cost and capitalization rates

Board's Decision:

The assessment is reduced to \$30,187,200.

Summary of Positions:

Complainant's Position:

In January 2008, a former Walmart store in south Edmonton, Alberta was sold for \$15,000,000 or \$115.65 per square foot of building area. Application of City of Edmonton assessment parameters indicated that the price supported a rent rate of \$8.29 per square foot.

There are relatively few new properties in Alberta where a major retail store is a tenant. A list of leases to large format retailers such as Home Depot, Walmart and Canadian Tire indicated face rent rates from \$4.00 to \$10.00 per square foot. The average and median rates were \$7.61 and \$7.78 per square foot, respectively. After adjustments for tenant inducements and other considerations of value, the rates dropped to an average of \$6.55 per square foot and a median of \$7.00 per square foot. The listed leases commenced in 2001, 2002, 2004, 2007, 2011 and 2012. The 2012 leases were renegotiated Calgary Zellers store leases following the acquisition by Target.

In other Alberta municipalities such as Edmonton and Calgary, these large format retail stores are assessed using rent rates from \$5.00 to \$11.50 per square foot. Most Walmart stores in these cities are assessed using rent rates of \$5.00 and \$10.00 per square foot in Calgary and \$7.50 per square foot in Edmonton.

The Respondent has applied a higher rent rate (\$18.00 versus \$14.00 per square foot) to the portion of the subject store that is occupied for grocery sales. Of all of the lease and assessment data in evidence, there is no application of different rent rates to the various store components. The market applies a single rent rate to the entire floor area of large format retail stores.

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The Respondent is treating this large format store as a compendium of businesses, which it is not. Another grocer, such as Sobeys, for example, would take over the grocery department within a Walmart store. The Respondent's position is entirely speculative and without any market evidence to support the position.

Investment risk and return in this property is no different than it would be in the Okotoks Home Depot store. For this reason, there are no grounds for the application of a lower capitalization rate in the valuation. For the 2013 assessment, the income approach used in valuing the subject property included a 3.00 percent allowance for vacancies and this rate should also apply for the current valuation.

Respondent's Position:

The sale of the former Walmart store in Edmonton was an old sale that was not fully supported as an open market – arms-length sale. It has been rejected as valid value support by numerous assessment review boards.

Okotoks is a small market area compared to major centres such as Calgary and Edmonton. As such, there is a lack of data such as big box store rents that can be gathered in the local market.

The capitalization rate for this property is set 0.25 percent lower than the rate for Home Depot due to locational differences.

The most current rent data from the Complainant was a set of 2012 lease renegotiations for former Zellers stores in Calgary that had been taken over by Target. Several boards have, in the past, concluded that lease renewals are not indicative of market rents.

In 2012, Rona vacated its 99,910 square foot store in Creekside Centre and listed the space for sublease. The rent rate was \$14.72 per square foot. Four other big box store leases in Edmonton (\$12.53 and \$13.00 per square foot) and Calgary (\$14.50 per square foot) were commenced in 2006, 2007 or 2008. Some of the tenants were Canadian Tire, Home Depot and Rona.

Three large format dry goods retail stores in Okotoks are all assessed using the same \$14.00 per square foot rent rate. These are the subject Home Depot, the 127,958 square foot Canadian Tire store and the 151,034 square foot Costco store.

Other properties in Okotoks are assessed using different typical rent rates depending on use. For example, assessments of automobile dealerships have different rent rates for retail space, shop space, storage space and office space. In shopping centres, rent rates range from \$8.00 to \$32.00 per square foot, depending on use and occupancy. Banks have a higher rate applied than restaurants and commercial rental units have varying rates as well.

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An historic analysis of grocery store rents showed solid increases from the 1980's (\$13.25 per square foot) to 2008-09 (\$23.50 per square foot). \$18.00 per square foot has been determined to be the current typical market lease rate for the subject grocery retail. The Okotoks Safeway and Sobeys stores have been assessed using this rent rate as has the grocery component within the Costco store. It costs more to finish floor space for grocery sales and that additional cost is reflected in the rent rate in the income approach.

Board's Findings and Reasons:

The CARB gives no weight to the former Walmart store sale in Edmonton in 2008. The vacant property sale was not supported by any market information that confirmed that it was an arms-length sale where no party was under undue compulsion to sell or buy. There was apparently a caveat on title that restricted use of the property. In any event, the CARB does not accept this dated sale as current market evidence.

Having regard to the Complainant's summary of input parameters in assessing similar properties in Calgary and Edmonton, the CARB finds that there is no basis for reducing the \$14.00 rent rate on the subject. The Complainant has not provided any comparison of market conditions in Okotoks, Calgary and Edmonton. Accordingly, there is no way that that evidence can be applied in the subject assessment. The legislation is clear that equity only needs to be achieved within each municipality and not from one to another.

Both parties have relied upon lease data from as far back as 2001. The most current involves some former Zellers stores in Calgary. Neither party has provided any insight into how the markets might have changed from year to year. The CARB heard comment about market rents and prices being very high in 2007-2008 compared to 2009 but there is no support from either party to suggest that rents transacted in 2001, 2006, 2012 or any other year should be considered applicable for a 2013 valuation.

The Complainant calculated the requested assessment using the vacancy rate that was used in making the 2013 assessment. The capitalization rate applied in assessing another commercial property was also adopted. There was no evidence or argument to support the changes. Notwithstanding that the Respondent had no support for the vacancy and capitalization rates used, the CARB has no justifiable reason to change either rate.

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The CARB accepts the Complainant's position that the grocery sales component of the subject store should be assessed using a different rent rate than the balance of the store space. Respondent's evidence shows that different rates are applied to space in other properties but a single large format store with varying uses within its walls cannot be compared to a shopping centre, for example, where the market shows that different spaces will attract different rents. The CARB notes that automotive service space in automobile dealerships is given a rent rate of \$17.00 per square foot. At least some restaurants have a \$28.00 per square foot rent rate applied. Automobile service and restaurant uses are made of spaces in the subject Walmart store (by licensees, not Walmart). No rent rate variance was applied to these spaces. The CARB is not suggesting that these spaces should be assessed using different rent rates. It is pointing out the inconsistency in the Respondent's valuations. The entirety of the Walmart super centre floor space should be assessed using a single typical rent rate and that rate is \$14.00 per square foot.

Board's Decision:

Neither of the parties has provided any reliable, current market support for the rent rates they have used. The CARB does not accept that rents from leases transacted in past years can be applicable in 2013 without market evidence to support that position. The CARB was provided with compelling evidence to support the application of a single rent rate to the entire floor area.

The CARB has recalculated the subject assessment by application of a \$14.00 per square foot typical rent rate to the entire square footage of the building. No other input factors have been changed. The revised assessment is truncated to \$30,187,200.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 17th day of November, 2014.



for:

Wayne Kipp
Presiding Officer

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APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	Respondent Disclosure
4. R2	Respondent Addenda

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 Internal Use

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	RETAIL	BIG BOX STORE	INCOME APPROACH	RENT, VACANCY RATE, CAPITALIZATION RATE