

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

BETWEEN:

Nora, Sherif and Adam Idris - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

H. Kim, Presiding Officer
D. Howard, Member
J. Tiessen, Member

These are complaints to the Town of Okotoks CARB in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered in the 2011 Assessment Roll as follows:

Roll Number	0003920
Address	1 Clark Avenue
Assessment	\$1,378,000

This complaint was heard on the 27th day of October, 2011 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Adam Idris

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the CARB:

- L. Turnbull, ARB Clerk and D. Scott, Assistant

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Property Description and Background:

The subject property is a 12-unit wood frame walk up apartment building constructed in 2001. It consists of 6 1-bedroom units assessed at a rental rate of \$850/month and 6 2-bedroom units assessed at a rental rate of \$1,025/month. 5% vacancy and a Gross Income Multiplier (GIM) of 10.75 are applied to arrive at the assessment under complaint.

Issue:

The assessment is too high as it fails to consider the impact of the property's deficiencies and comparatively low annual rental income.

CARB'S Findings in Respect of the Issue:

Complainant's Position

The Complainant purchased the subject property in 2006 as an investment. The building had been for sale for over a year, and was sold by the CIBC as is where is. An appraisal report in April 2006 prepared for financing purposes concluded the value at that time was \$975,000.

There were significant deficiencies in the property that came to light after the Complainant purchased the building. It had never received a final occupancy permit because the structural and mechanical/electrical engineers were not paid and did not submit the Schedule C forms required under the Alberta Building Code. The performance security provided under the Development Agreement with the Town was forfeit due to numerous deficiencies that were documented but not corrected. Faulty material was used in the construction. For example, copper piping of the wrong type, unable to withstand circulating water, was used for the boiler system, resulting in frequent water leaks with repair expense and inconvenience to tenants. A preliminary estimate of the cost to replace the existing copper piping to the correct material is \$55,000. The roof was installed incorrectly also resulting in frequent leaks, and requires replacement at a cost of \$25,000.

The problems mentioned, as well as lack of laundry facilities, make it difficult to achieve the typical market rents applied to the property. The rent roll for Dec 31, 2010 was presented. Some of the tenancies were long-term, but five 1-bedroom units and three 2-bedroom units were occupied since 2009 and achieve rents substantially less than what is applied to the assessment. The Complainant had attempted to update the 2006 appraisal for mortgage renewal purposes. He presented an email from the appraiser dated May 9, 2011 stating a tentative updated valuation would be \$1,177,000. The Complainant also presented a letter from a commercial realtor dated May 2, 2011 for potential sale of the property. The letter stated that the net income and a 7% cap rate results in an evaluation of \$1,052,000 however the deficiencies could be in the vicinity

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of \$100,000 and a selling price of \$1,000,000 would be appropriate.

The assessment does not recognize the negative characteristics which would have to be disclosed to a potential purchaser and would reduce the market value. The Complainant requested that the assessment be reduced to \$1,100,000

Respondent's Position:

Three assessment comparables in close proximity to the subject were presented. They are assessed at \$825 to \$850/month for 1-bedroom and \$1,000 to \$1,050/month for 2-bedroom, all have 5% vacancy applied and a GIM of 11 compared to the subject at 10.75. The Respondent stated that the lower GIM was used to recognize some of the challenges in the subject.

Six sales comparables were presented. Five were from the Forest Lawn, Bowness and Mayland Heights communities of the City of Calgary, and one from the City of Airdrie. The Respondent considered these to be market areas comparable to the Town, and the sales support the parameters used in the assessment.

The Respondent presented an extract from the 2006 appraisal report. It stated that the quality of construction was average but appeared that maintenance and repairs have been neglected over the last few years. It further stated that a conscientious owner will invest in attending to the repairs and maintenance items to bring the condition of the property up to respectable condition which could result in a slight rental increase. The Respondent suggested that attending to the maintenance issues would improve the performance of the subject property. Assessments represent the value of the fee simple estate, and typical values should be used to arrive at the assessment, therefore poor performance due to deferred maintenance should not be considered.

The Respondent conceded that the Complainant noted some significant capital expenditures were required for major repairs. The Respondent cited an example from the City of Calgary relating to broken cables in post-tensioned concrete slabs and noted that such expenditures are recognized for assessment purposes as a one-time cost to cure allowance applied in the year that the repairs are done. Therefore there should not be an allowance applied to the year under complaint.

The Respondent requested that the assessment be confirmed.

Findings and Reasons:

The evidence from both parties indicates that the subject property suffers from significant and atypical deficiencies in construction, and in fact has not received a final occupancy permit notwithstanding that it is occupied with a temporary permit. Clearly the building would sell for less than it would if it did not suffer from such deficiencies.

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The CARB does not agree with the Respondent's position that a one-time cost to cure allowance should be applied in the year they are corrected. This approach does not reflect the valuation standard of market value required under the legislation. The market value of a deficient property would be less, for the entire period from when the deficiency and cost to cure is identified, until such time as it is corrected. Further, in the year it is corrected, the property would no longer be deficient at December 31 of that year and no allowance would be warranted.

The rent roll shows that the subject does not achieve the typical rents used in the assessment. While many of the leases were dated, five 1-bedrooms and three 2-bedrooms were occupied starting in 2009 and later, and would be considered to reflect current market rates. The 1-bedrooms achieved an average and median monthly rent of \$806 and \$795/month respectively, while the 2-bedrooms achieved an average and median monthly rent of \$915 and \$895/month respectively. The CARB determined that lease rates of \$800/month for a typical 1-bedroom and \$900/month for a typical 2-bedroom were appropriate given the characteristics of the subject property.

The comparable sales presented by the Respondent had GIM values from 10.19 to 14.93. The deficiencies in the subject property would put it at the low end of the scale. Therefore, the CARB determined that a 10.25 GIM would be appropriate, applied to typical rents in the subject property with 5% vacancy.

Board's Decision:

The complaint is allowed, in part, and the assessment is reduced to \$1,191,000.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 10th day of November, 2011.



H. Kim

Presiding Officer

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Appendix A – Documents presented at the Hearing and considered by the CARB

- C1 Complaint form
- C2 Complainant's Evidence Submission
- R3 Assessment Brief
- R4 MGB Order 021/33
- R5 Court decision - Westcoast Transmission Company Ltd. v. Assessor of Area 9 – Vancouver, BC Supreme Court decision 1987

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.*