

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

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 Section 460, Revised Statutes of Alberta (2000).

BETWEEN:

Costco Wholesale Canada Ltd. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

H. Kim, Presiding Officer
D. Howard, 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
0095036	202 104 Southbank Boulevard	\$32,352,100

This complaint was heard on the 28th day of October, 2014 at the Town of Okotoks Council Chamber at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- A. Izard, Agent, Altus Group Limited

Appearing on behalf of the Respondent:

- P. Huskinson, Assessor

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Preliminary Matters:

[1] The Complainant requested that certain information from the Respondent's submission be removed, on the grounds that it related to information that was requested under s. 299 of the Act and not provided. Section 9(4) of Matters Relating to Assessment Complaints Regulation AR 310/2009 (MRAC) states:

9(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.

[2] The Act states:

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

(a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,

(b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and

(c) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1).

300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.

(1.1) For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:

(a) a description of the parcel of land and any improvements, to identify the type and use of the property;

(b) the size of the parcel of land;

(c) the age and size or measurement of any improvements;

(d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;

(e) any other information prescribed or otherwise described in the regulations.

(2) The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.

MRAC provides further detail on the nature of information required to satisfy the provisions of the Act:

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

27.3(1) For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include

- (a) descriptors and codes for variables used in the valuation model,
- (b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and
- (c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property.

(2) Despite subsection (1), information that is required to be provided under section 299 or 300 of the Act does not include coefficients.

[3] The Complainant submitted a letter dated May 27, 2014 addressed to the Respondent that detailed a lengthy list of information requested pursuant to s. 299.

[4] By email dated June 4, 2014, the Respondent provided information in response:

- The retail lease rate indicators: a list of CARB and Municipal Government Board (MGB) decisions, the RioCan 2012 and 2013 annual reports, two leases in Calgary, comparable properties in Okotoks.
- The grocery lease rate indicators: nine leases in Calgary.
- Market indicators: four third party cap rate reports, nine sales in Okotoks, Strathmore, and Calgary, property inspections in 2013 and 2014.
- A floor plan of the subject showing space allocation of retail/grocery lease rates
- Eight Assessment Request for Information (ARFI) responses, for the subject and other properties represented by the Complainant's agent.

The Respondent further stated in the email that some of the requested information would not be provided, as requests for financial information are made with a declaration of maintaining confidentiality. The non-residential inventory in Okotoks is small and if the information were to be released it would be easy to identify the actual space, allowing a property owner to gain a competitive advantage over another.

[5] The disputed evidence in the Respondent's materials consisted of:

- Two pages consisting of a graph and chart showing a trend in grocery store lease rates from the 1980s to 2009.
- Excerpts from complainants' submissions from another hearing and a commercial leasing brochure, detailing lease rates for three retail properties in Calgary.
- Excerpts from the Complainant's agent's disclosure document from a 2012 complaint for a different commercial property in Okotoks, detailing grocery store lease rates of various properties.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Issue:

[6] Must the CARB exclude the evidence described above pursuant to s. 9(4) of MRAC?

Complainant's Position

[7] The Complainant presented numerous prior orders of the Calgary CARB in which specific evidence that had not been provided pursuant to s. 299 requests were excluded from the hearing. The basis for the Respondent's refusal to provide the information is not supportable given that this information is now provided at the hearing and therefore available to the public. Further, s. 301.1 of the Act states that sections 299 to 301 prevail despite the *Freedom of Information and Protection of Privacy Act*.

[8] The Complainant stated the definitive discussion of this matter is the June 11, 2014 decision of the Court of Appeal of Alberta in *Canadian Natural Resources Limited v. Wood Buffalo (Regional Municipality)*, 2014 ABCA 195 (CNRL) which related to a decision of the Wood Buffalo CARB to admit evidence that had not been provided in the Municipality's response to CNRL's request for information. The Court described the matter:

[17] CNRL submits that on a proper interpretation of s. 299 of the *MGA* and s. 9(4) of *MRAC*, the Municipality is confined to adducing as evidence before the Board the information it had already provided in response to CNRL's s. 299 request. The contention of CNRL is that the Municipality had not provided the Schmidt/Thompson report in response to CNRL's s. 299 request and that, accordingly, the report was inadmissible at the complaint hearing.

In its decision, the Court interpreted the sections very broadly:

[23] The language of s. 9(4) of *MRAC* precludes the CARB from hearing any evidence "relating to information that was requested by a complainant" [emphasis added] that the Municipality failed to provide under s. 299. As I see it, the legislative scheme applicable to the case at bar is analogous to the federal income tax regime. It reflects a reasonable policy choice on the part of the Legislature, prohibiting a tax authority from assessing tax on one basis and defending it on another. It is, in my view, no answer that the CARB gave CNRL extended time to digest and respond to the Schmidt/Thompson report.

The Court specifically rejected the Respondent's contention that the taxpayer's request for information is to be parsed and narrowly read, and decided to allow the appeal and remit the matter to the CARB to reconsider its preliminary ruling in the light of the reasons for judgment.

[9] In the subject situation, the purpose of the s. 299 request was to allow the Complainant to obtain information about its 2014 assessment at the time it made that request. It is not sufficient to state long after a request was made that other information was relied on but was not necessary to disclose because it was information that was already in the possession of the Complainant. The Complainant may indirectly or directly be in possession of all manner of information about the value of its property but that is not the test under s. 299 and 9(4). If the Respondent is not able to establish that the disputed information submitted in disclosure formed part of its s. 299 response to this specific taxpayer regarding this specific assessment, the information must be excluded.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Respondent's Position

[10] The Respondent referenced s. 300(2) and 301 of the Act to support non-disclosure of specific lease information due to the need to protect confidentiality, and stated specific leases are not required to satisfy the requirements of S. 299. CARB 0776-2012-P stated:

The typical lease rate is, in the judgment of the CARB, an example of " ... information in respect of that property ... " There is no requirement in the MGA or in the Matters Relating to Assessment Complainants Regulation (MRAC) or MRAT that requires the Assessor to release information that pertains to the background information utilized to derive the typical lease rate applied to the property. In this case it is the typical lease rate applied that meets the requirements of Section 299 (1.1) (a), not the background information utilized to derive same. ... If the requested background information were a requirement of the MGA then it would require the Assessor to release their entire data base and their analysis of same and this, in the judgment of the CARB, would be unreasonable and would go beyond the intent of the legislation.

[11] At the time that the s. 299 request was made and responded to, *CNRL* had not yet been issued. The Complainant could have requested further information but did not. In advance of the decision in *CNRL*, the Respondent relied on the findings of Justice Verville in *Canadian Natural Resources Limited v. Wood Buffalo (Municipality)*, 2013 ABQB 91:

[50] In my view, the CARB's decision that the Municipality had complied with *CNRL*'s s. 299 request was not unreasonable and falls within a range of possible defensible outcomes. Restricting the evidence before it to that which was provided under s. 299 would render s. 8(b) and (c) MRAC meaningless.

The Respondent stated that a more detailed package may have been provided had *CNRL* been issued in advance of the response to the Complainant's request; however the body of cases up to that point suggested the response provided complied with the legislation.

[12] The Complainant could have requested a compliance review pursuant to s. 27.6 of Matters Relating to Assessment and Taxation Regulation AR 220/2004 (MRAT) but did not. The Respondent presented a June 14, 2012 decision on a similar compliance review request to the Minister wherein the information being requested was found not to be what was intended to be included in a s. 299 request.

Decision on the Preliminary Matter:

[13] The disputed evidence in the Respondent's submission will be heard.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Reasons:

[14] The Complainant argues that the effect of *CNRL* is that the Respondent is confined to adducing as evidence before the CARB the information already provided in response to the s. 299 request. The CARB disagrees. According to *CNRL* the legislative purpose is to prevent defending an assessment on a different basis than that used to prepare it, it is not to prohibit a respondent from using additional information to justify the assessment on the same basis as it was prepared. This reading is evident from the facts in *CNRL*, which are that the assessor commissioned a report to support an entirely new assessment based on an entirely different methodology:

[25] ... the amended assessment, according to the assessor, engages a calculation that does not accord with his understanding of the manner in which the assessment of machinery equipment is prepared. In the result, the report does not attempt to justify that which is reflected on the reassessment. It embarks on a new analysis.

[15] The subject case is completely different from that in *CNRL*. Here, the Complainant was provided with the income parameters, and details of the areas assessed. In the CARB's view, this information was sufficient to determine whether a complaint should be made. The disputed evidence is a trending analysis, specific lease information for the premises previously listed, and a grocery store lease rate analysis previously provided by the Complainant's agent. The CARB does not consider this evidence to constitute defending the assessment on a different basis to that disclosed in response to the s. 299 request, as the issue under complaint remains the validity of the rental rates used to determine the assessed value of the subject property.

[16] The Complainant's reading of *CNRL* would also have absurd results. For example, the Respondent's disclosure requirements pursuant to s. 8(2)(b) of MRAC would become completely superfluous in the event of a s. 299 request. More importantly, it would result in a process that is unfair to the Respondent, and by extension unfair to all of the remaining taxpayers who must make up the difference when an assessment is wrongly reduced.

[17] The facts in *CNRL* related to the 2009 municipal tax assessment of the Horizon Oil Sands Project and in the words of the Court:

[2] ... The rules for calculating municipal tax on an oil sands project are complex. An oil sands project is classified as "machinery and equipment" under the Municipal Government Act, RSA 2000, c. M-26 ("MGA"). Municipal tax is based on "assessed value" of the machinery and equipment. The "assessed value" comprises the actual cost of constructing or developing the machinery and equipment, as reported by the taxpayer, subject to certain adjustments and calculations premised upon a statutorily prescribed formula.

[18] In contrast, the rules for calculating property assessments are not complex. MRAT states the valuation standard for a parcel of land not used for farming operations is market value, and the 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 the subject.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

[19] The majority of property assessments are prepared based on available market data. The data is processed using statistical methods to create a model or derive income parameters from which to assess on a mass appraisal basis. The s. 299 requirements, as elucidated by the amendments in s. 299(1.1), are intended to ensure that potential complainants know what key factors, components and variables are used in the valuation model, and the values used for the subject. This information helps a potential complainant understand whether their individual property was processed correctly. However, since assessments are prepared with statistical methods and models, it is probable that some assessments will be incorrect even when processed correctly.

[20] For this reason, it is entirely appropriate for an assessed person to prepare a site specific appraisal to support a lower assessment, and s. 300 of the Act is available for access to information about comparable properties to perform this task. By the same token, it is entirely appropriate for an assessor to respond with site specific information to support the "mass appraisal" assessment. Inevitably, this exercise may require the assessor to use site specific information that was not used to prepare the original mass appraisal, and not necessarily have been disclosed in response to section 299. To deny the assessor this ability would result in a skewed complaint process inconsistent the overall goal of fair process evident in MRAC and Part 11 of the Act.

[21] The CARB finds that for a small municipality with a limited inventory of commercial properties, it is reasonable for an assessor to use information from neighbouring municipalities. In such a situation, ARFI responses submitted to the neighbouring municipalities would not be available to the assessor.

[22] In the subject case, the Respondent gleaned market indicators from party positions set out in prior CARB and MGB orders, and from disclosure from complainants on previous complaints. It is entirely reasonable to supplement such information with greater detail when necessary to defend the assessment at a hearing and not before. Further, the bulk of the disputed information is from the Complainant's agent's submissions at other hearings. The Respondent's s. 299 response included the list of premises and the Complainant's agent could have accessed the lease details in advance of the Respondent's disclosure had the information been in some way prejudicial.

[23] The basic purpose of the disclosure provisions in MRAC is to ensure that both parties are made fully aware of the case to be made and are not prejudiced at the hearing. To the extent that the disputed information originated from the Complainant's agent, the CARB does not consider it to be evidence relating to information that was requested by a complainant but not provided. Further, excluding the disputed evidence would be tantamount to agreeing that the Respondent is required to limit disclosure evidence to that which was provided in the s. 299 response, effectively requiring the Respondent to disclose first, contrary to the provisions of MRAC. Accordingly, the CARB does not agree that the disputed evidence must be excluded pursuant to s. 9(4) of MRAC.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Property Description and Background:

[24] The subject property is the Costco Wholesale store in Okotoks, consisting of a 155,734 square foot (sf) improvement built in 2010 on a 13.29 acre parcel of land in the South Industrial district. It is assessed on the income approach, based on 90,464 sf Retail, 140 sf Gas Kiosk, 5,400 sf Auto Service and 365 sf Optometrist at a net annual rental rate of \$14/sf; 4,560 sf Freestanding Retail at \$25/sf, 1,475 sf Retail Upper at \$10/sf and 53,330 sf Grocery at \$18/sf for a total gross rental income of \$2,437,856. Vacancy allowance of 2%, operating cost shortfall based on \$8.80/sf operating costs and 2% non recoverables are deducted resulting in a net operating income of \$2,313,908 which, capitalized at 7.5% and rounded, results in a building assessment of \$30,852,100. An additional \$1,500,000 for six gas pumps at \$250,000 per pump is added, to result the assessment under complaint.

Issues:

[25] The Complainant identified a number of issues in the initial complaint, including whether the mezzanine and entrance canopy areas should be assessed at all, and whether the assessment applied to the gas pumps was correct. These issues were withdrawn and the hearing and the only issues argued were:

1. The Retail and Grocery areas are one contiguous space and should not be assessed as discrete spaces with different rates.
2. The rental rates applied to the Retail and Grocery areas are incorrect and in excess of market rates.

Complainant's requested value: \$20,413,800

Summary of Positions:

Complainant's Position:

Different rates for contiguous areas

[26] The Complainant referred to the floor plan provided by the Respondent and submitted photographs of the subject, showing that the spaces separately identified as Retail and Grocery are in fact one contiguous undemised space that has the appearance of a warehouse. The stock is on pallets and in movable coolers, therefore the delineation is arbitrary, and appears to be based on what items are for sale in which location. These could easily be changed. There is no physical difference between the 90,464 retail at \$14/sf and the 53,330 sf grocery at \$18/sf.

[27] The public entrance to the building is within the area assessed as retail, while the loading docks are within the area assessed as grocery. The space would be impossible to demise as a grocery space and a retail space. It is, in fact, a single 143,794 sf warehouse retail space and should be assessed as such.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Rental rate

[28] Even if it were appropriate to apply separate rates, the rental rates applied are not supported by market leases. The only grocery store lease in Okotoks commenced in 2004 and is too dated to be an indicator of current market rates. The Complainant presented nine grocery store leases in Calgary, ranging in size from 38,753 sf to 76,326 sf that commenced between 2009 and 2012 to show that market lease rates have a median \$15/sf with a weighted average of \$14.74/sf.

[29] The Complainant presented interior photographs to show the contrast in the level of finishes and store fixtures between a typical grocery store and the portion of the subject where food products are sold. The subject looks like a warehouse with concrete floors, open ceiling with exposed services and industrial racking with stock displayed in open cases on pallets. In comparison, a typical grocery store has finished floors and ceilings, stock displayed on shelving with attractive lighting. The food sales areas of the subject are not comparable to a grocery store and should not be assessed at typical grocery store rates, which are nevertheless substantially less than the \$18/sf applied.

[30] The Complainant presented an analysis of market rents for retail anchor spaces, with six leases in Calgary and one in Edmonton from 1997 to 2011 for space ranging from 90,098 sf to 158,022 sf. The rates ranged from \$6.85/sf to 14.50/sf with a median of \$7.74. The most recent leases support \$7/sf: 122,616 sf in Calgary in May 2011 for \$7/sf and 90,098 sf in Edmonton leased in September 2011 for \$7/sf.

[31] Within Okotoks, two retail spaces very close to the subject of 25,089 sf and 17,465 sf were leased in March 2011 and April 2011 respectively, each at \$15/sf. The Complainant submitted that it was not possible that the subject 143,794 sf space could be at an overall market rate of \$15.48/sf given the two recent leases on significantly smaller space.

[32] The Complainant presented the 2014 assessments of 37 comparable box stores 90,000 sf and greater in southern Alberta, including 29 stores in Calgary. The assessments ranged from \$91.38/sf to \$162.02/sf. The box retail portion of the subject property is assessed at \$195.92/sf, significantly higher than every other comparable property in southern Alberta. The Costco store at CrossIron Mills in Rocky View just north of Calgary is an identical building, built at the same time as the subject, which looks exactly the same other than the subject has trees. The Complainant considers this to be in a comparable location as the subject. Its 2014 assessment for the retail component is \$17,516,000 compared to \$28,172,819 for the subject. The City of Calgary uses rental rates of \$7 to \$10/sf for assessing big box retail, with a median of \$10/sf.

[33] The 2013 assessment of the subject was \$22,780,900 which was in the range of other Costco stores in southern Alberta. The 2014 assessment under complaint is a 42% increase and unsupported by changes in the marketplace.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Respondent's Position:

Different rates for contiguous areas

[34] The Respondent cited legislative requirements for assessment, and referred to previous CARB and MGB orders that state current market rates should be applied, and that lease renewals should be given less weight. The Respondent stated that notwithstanding the lack of a comprehensive data set of market rents for all space types, rates were developed using logic and judgement based on training and experience. The Respondent quoted from the Appraisal Institute of Canada's documentation to justify this approach.

[35] The Respondent presented photographs of the subject, including bakery and meat processing areas to demonstrate substantial finishes and mechanical systems to support a differential in lease rate from typical retail.

Rental rate

[36] The Respondent presented lease indicators for retail space from prior CARB and MGB decisions:

- 96,910 sf sub-lease in Calgary, listed in 2012 at \$14.72. The original 2006 lease to Rona at \$14.50 rent is still being paid.
- 95,423 sf in 2008 at \$14.50/sf for a Canadian Tire in Calgary
- 104,079 sf in 2008 at \$13/sf for a Home Depot in Edmonton
- 101,029 sf in 2008 at \$11.75 for a Canadian Tire in St. Albert
- 193,159 sf in 2007 at \$13/sf for a Walmart in St. Albert.

[37] The Respondent does not consider the 122,616 sf May 2011 lease at \$7/sf in Calgary to be a market indicator, as it was a re-leasing of Zellers space that was taken over by Target. The Respondent presented the 2012 RioCan Annual Financial Report that stated 23 of 34 Zellers leases were assigned to Target, and that RioCan anticipated additional revenue from the leasing of stores not taken over by Target as the lease income previously generated by Zellers was considerably below current market rates.

[38] The Rona and Canadian Tire leases in Calgary are the best indicators and support a 2013 typical market lease rate of \$14 for the retail component, which is equitably applied to other comparable properties in Okotoks (the 127,958 sf Canadian Tire and the 83,691 sf Home Depot).

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

[39] The grocery store rate was based on trends from an analysis of grocery store lease rates provided by the Complainant in previous hearings. The Respondent submitted a chart of grocery store lease indicators organized by date leased and removing “outliers” to show there was a trend in median grocery store rates increasing from \$13.25/sf in the latter half of 1980s to \$18.75 in the latter half of the 2000s. The median in 2008-2009 was \$23.50. The Respondent stated that the data supported a market lease rate of \$18.75/sf; however the rate applied in Okotoks to all grocery spaces (Safeway, Sobey’s, and the grocery component of Walmart) is \$18/sf, and this rate was also applied to the grocery component of the subject.

[40] In summary, the Respondent submitted that the assessment is correct, fair and equitable and should be confirmed.

Complainant’s Rebuttal:

[41] The Complainant disputed the actual value of the recent retail leases cited by the Respondent, and submitted excerpts from the lease documents:

- The 95,423 sf Canadian Tire lease at \$14.50/sf included \$65/sf in tenant allowance, which is \$3.25/sf amortized over the term of the lease. It also included a cap on the tenant’s share of operating costs at \$1.25/sf in the first year, increasing around 4% per year. Typical operating costs in Calgary are in the range of \$8/sf. Therefore, the cap and the tenant allowance constitute a significant discount from the \$14.50 face rate and cannot be used to justify a \$14/sf market rate for the retail portion of the subject.
- The 96,910 sf Rona lease is \$14.50/sf includes mezzanine office, garden centre and kiosk space on which there is no rent paid. The actual building area is 123,560 sf. The Respondent applies \$23/sf for mezzanine office, \$14/sf for garden centre and kiosk space for assessment of comparable properties in Okotoks. If imputed rent for those spaces is deducted from the total rent paid, the remaining amount equates to a lease rate for main floor retail of \$10.67/sf.

[42] The Complainant disputed the grocery store lease rates and trend analysis, stating that there was no evidence to support removing the “outliers” from the analysis. The lease rates of the “outliers” were all lower, and if included there would be no increasing trend. The higher grocery lease rates in 2008-2009 were for stores that are not at all comparable to the subject. One was in a very high quality village concept leased in 2009 at \$26.45/sf. A portion of that space is now being subleased at \$18/sf, indicating that the initial lease rate is higher than current market rates. Another lease cited, at \$23.50/sf is located in the high density Beltline district of Calgary, not at all comparable in location to the subject. Further, the leased area includes a third floor restaurant space on which no rent is paid. If rent on the restaurant space is imputed at \$28/sf (the typical rent applied by the Respondent for restaurant space) and deducted from the total paid, the grocery rate is \$16.75/sf. A third grocery store cited was leased in 2008 at \$24/sf but is now closed, and that lease rate should not be used in the analysis.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

[43] The Complainant submitted that there is no reason for newer leases in 2011 and 2012 to be excluded from the analysis. The Complainant presented the 2014 Citywide Supermarket Lease Analysis for A, B and C quality from the City of Calgary. It analyzed 4 leases each for A and B quality and two leases for C quality with median rates of \$15/sf, \$13.50/sf and \$9.75/sf respectively. There is no market evidence to support \$18/sf for grocery space in Calgary, and no recent market leases at all in Okotoks.

[44] In summary, the Complainant stated that the subject store was not demisable and should be assessed at one rate based on market lease rates for a 143,794 sf warehouse type retail space. The applied retail rate is overstated, and the Complainant requested it be reduced to \$9/sf or, alternatively, \$10/sf to reflect market lease rates for comparable properties.

Findings and Reasons:

Different rates for contiguous areas

[45] The photographs show that the entire warehouse retail area is one contiguous space. Where there is market evidence to support applying different rates, or where the characteristics of the space are distinctly different, there may be justification for applying different rates in deriving the value of a property using the income approach. In the subject situation, the entire retail area is undistinguishable, and the delineation of grocery and retail areas appear to be solely based on the nature of the products for sale within each area and the location of movable refrigeration equipment. Clearly, the location, amount, and type of stock could vary based on demand, and the demarcated grocery and retail areas could increase or shrink at any point in time.

[46] The CARB agrees with the Complainant that there is no support for loading docks to be identified as part of the grocery space and the customer entrance area to be identified as part of the retail space. The bakery and meat processing areas appear to have a higher level of finish and more mechanical systems; however they comprise a very small proportion of the overall floor area and the CARB is of the opinion that the overall market lease rate would not be significantly impacted by the improvements within those areas.

[47] Accordingly, in the subject property, the CARB finds that there should not be a different market lease rate applied to those portions of the floor area where foodstuffs are for sale relative to those portions where dry goods are for sale.

Rental rate

[48] There was a substantial amount of evidence and argument focussed on the market lease rate of grocery stores in the Calgary area, but the CARB does not find that lease rates for grocery stores in the range of 50,000 sf provide any assistance in determining the market lease rate of a warehouse store three times the size, particularly in view of the higher levels of finishes in the grocery stores presented as comparables.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

[49] The entrances to the property are within the area assessed as retail while the loading docks are within the area assessed as grocery. The space would be impossible to demise as separate grocery and retail spaces. In the absence of market evidence to support such a hypothesis, the CARB finds it highly unlikely that an undemised 143,794 sf space would rent for the sum of the lease rates of a 90,464 sf and a 53,330 sf space.

[50] There were no recent leases of very large spaces from which to determine an appropriate lease rate, and the CARB agrees that the Calgary Rona and Home Depot leases are the best indicators of value. The face rent of each lease is \$14.50/sf but the CARB does not agree that this supports a market rent of \$14/sf for the subject retail space. While the CARB finds that it is appropriate to assess mezzanine spaces and garden centres since they exist and have value, where the market rent rates relied on do not include rent payable on such spaces the face rents must be adjusted. Accordingly, the CARB is of the opinion that the market rent on the retail space for the Rona lease actually equates to \$10.67/sf. Similarly, the 2008 Canadian Tire lease is substantially less than the \$14.50 face rate when the tenant allowance and cap on operating costs are factored in, and could be as low as \$5/sf.

[51] The CARB was satisfied that a \$10/sf lease rate is a reasonable value for the subject very large undemised warehouse retail space, based on the adjusted actual rents of the recent leases of very large spaces and the lease rates applied by the City of Calgary to similar spaces.

[52] The three Costco stores in Calgary are assessed at \$20,610,000 to \$23,970,000 for 137,841 to 148,000 sf rentable area. The CARB notes that other municipalities within the Province of Alberta are subject to the same legislative requirements for market value assessment, and expects that the assessments of the Costco stores in the City of Calgary are an estimate of their market value. The CARB finds it unlikely that the market value of the Costco store in Okotoks would be significantly higher than a similar Costco store in the City of Calgary.

[53] Accordingly, the CARB determined that \$10/sf for the retail space is supported by the lease evidence, and would result in an estimate of market value that is in the range of similar properties in the same economic area.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

Board's Decision:

[54] The retail and grocery rates are reduced to \$10/sf and all other parameters are unchanged. As a result the assessment is reduced to \$22,255,100.

It is so ordered.

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



for: H. Kim

Presiding Officer

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2014

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Evidence Submission
2. C2	Complainant Photo Appendix
3. C3	Complainant 2014 Retail Anchor Analysis
4. C4	Complainant Evidence Appendix A Grocery
5. C5	Complainant Evidence Appendix B
6. R1	Respondent Disclosure
7. R2	Respondent Addenda
8. C6	Complainant Rebuttal
9. C7	Complainant Argument re s. 299

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.*

Property Type	Property Sub-Type	Issue	Sub-Issues
Jurisdiction	Information Exchange	Evidence disclosure	
Retail	Big Box Store	Income Approach	Net Market Rent/Lease Rates