

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-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:

Home Depot Holdings Inc. - Complainant

- and -

The Town of Okotoks - Respondent

BEFORE:

P. Petry, Presiding Officer
D. Howard, Member
J. Tiessen, Member

This is a complaint to the Town of Okotoks Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Okotoks and entered in the 2010 Assessment Roll as follows:

Roll Number	Address	Assessment
0094110	101 Southbank Boulevard	\$11,501,000

This complaint was heard on the 2nd day of November, 2010 at the Town of Okotoks Council Chambers at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- AEC International (Agent for the Complainant) – B. Soulier and J. Wingrowich

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the ARB – L. Turnbull, ARB Clerk and D. Scott, Assistant

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

Preliminary Matter:

The hearing of this complaint was originally scheduled for October 15, 2010, however the Complainant had not received the Respondent's disclosure in accordance with the appropriate timeframe and therefore the CARB panel hearing the matter granted a postponement to November 2, 2010. This CARB panel also took initiative to consider the awarding of costs and requested that the parties prepare their submissions on the cost matter by November 1, 2010. The CARB panel convened to hear the merit matters of this complaint on November 2, 2010 has only limited knowledge of the issues considered by the previous panel on October 15, 2010 and therefore declined to hear the parties respecting the matter of cost. The November 2, 2010 CARB decided that the cost matter should be referred to the original October 15, 2010 CARB panel for their consideration and decision based on the written submissions of the parties. The parties were offered an opportunity to provide rebuttal submissions on the cost matter but declined to do so. The ARB clerk is directed to provide the party's submissions on the cost matter to the October 15, 2010 CARB panel for their consideration and decision.

Property Description and Background:

The subject property is a 85,250 square foot Home Depot outlet that was constructed in 2008. This property is located in a new commercial area just north of Highway 7 in southeast Okotoks. In 2009 the subject property was assessed at \$15,951,300 and this value included the value of a fenced in outdoor area used for seasonal merchandise. The 2010 assessment of \$11,501,000 is the subject of this complaint and the outdoor seasonal area has not been assessed or included in the 2010 value. The primary focus of this complaint is the rental rate of \$12 per square foot used by the Assessor in reaching the 2010 value.

Issues:

What is the correct, fair and equitable rental rate for the subject property?

Other Issues on the Complaint Form:

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

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

Board's Findings in Respect of the Issue:

The correct, fair and equitable rental rate for the subject property is \$11 per square foot.

Summary of the Partys' Positions:

Complainant

While not disagreeing with the direct capitalization valuation approach the Complainant also considered the cost approach and the direct sales comparison approach. Based on the Marshall and Swift big box classes the Complainant proposed that the 458 warehouse discount store class matches the construction and finish of the subject property. The Marshall and Swift short form estimator sets the value for this class at \$60.34 per square feet which results in a value of \$5,143,985 for the subject improvement. This value added to the land cost of \$3,091,900 and an allowance of \$1,000,000 for paving, lighting, canopies etc. produce a total value of \$9,235,885 or \$108 per square foot. The Complainant indicated that there are very few sales of properties similar to the subject property; however, the sale of a Wal-Mart property at 9717 – 21st Avenue in Edmonton is a reasonable indicator of value for this type of property. This property sold for \$15,008,000 or \$116 per square foot and based on a 7% cap rate the sale is reflective of a rental rate of \$8.29 per square foot. Reference was also made to the sale of a Brick store at 3451 Sunridge Way N.E which sold January 4th, 2010 for \$10,250,000 or \$79 per square foot.

In support of their proposed rental rate of \$8.00 per square foot the Complainant submitted an analysis of ten lease rates for Zellers Stores and other national retailers located in Calgary, Edmonton, Lethbridge, and St. Albert. This analysis showed an average face rate of \$7.63 and a median rate of \$7.89 and an average rate net of common area costs of \$6.87 and a median rate of \$7.03. The Complainant also submitted an equity analysis showing lease rates used in the assessments of eleven comparable Home Depot outlets in Calgary (8), Airdrie (1), Strathcona County (1) and Grand Prairie (1). This analysis shows a range of lease rates used in the assessments from \$10 per square foot to \$12 per square foot. The median rate is \$10. The analysis also shows that the overall assessments of these comparables produce an average value of \$120.89 per square foot and a median value of \$117.12 per square foot. In addition, the Complainant brought forward an analysis of assessed lease rates for seventeen Wal-Mart and Zellers stores where the rates ranged from \$7.00 to \$11.00 per square foot. This analysis also produced an average overall assessed value of \$102.99 per square foot and a median of \$104.08 per square foot. The Complainant argued that the subject's assessment at \$135 per square foot is far in excess of its market value or a fair and equitable value when compared to other comparable properties.

The Complainant provided data on numerous MGB, CARB and ARB properties and

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

business rate decisions respecting Wal-Marts, Zellers, Home Depots, Canadian Tire and Super Stores wherein the respective boards concluded that a rate of \$8.00 per square foot was appropriate in most cases and in other cases a \$9.00 or \$10.00 rate was decided to be the correct rate. The rate of \$12 for the subject property is the highest rate for a Home Depot in the province and cannot be justified even within the Okotoks market where the Wal-Mart is assessed at a rate of \$10.25 per square foot and Costco at \$11.00 per square foot.

Based on all of the evidence put forward, the Complainant concluded that a lease rate of \$8.00 is equitable and correct. The Complainant adopted the Respondent's pro-forma changing only the lease rate from \$12 per square foot to \$8 per square foot and adding a 4% allowance for non recoverable expenses. These changes result in a value of \$7,298,000 and this is the value requested by the Complainant.

Respondent

The Respondent explained that given the limitations respecting similar properties in Okotoks it necessitates an analysis of lease rates beyond Okotoks to determine a reasonable starting or base rate. The Assessor then relying on logic and judgement based on training and experience has developed a hierarchy of valuation inputs for the big box stores in Okotoks. Based on the analysis done and the valuation criterion developed, a rental rate of \$12 per square foot was determined as being appropriate for the subject property. Rates applied to other large retail in Okotoks are as follows:

•	No Frills	33,535 sq. ft.	\$14.00
•	Staples	22,700 sq. ft.	\$18.00
•	Safeway	42,213 sq. ft.	\$15.00
•	Canadian Tire	39,950 sq. ft.	\$15.00
•	Sobeys	42,792 sq. ft.	\$16.00
•	Wal-Mart	110,735 sq. ft.	\$10.25
•	Costco	146,308 sq. ft.	\$11.00

The Respondent submitted a number of decisions of other Boards to support the rental rate applied to the subject property. MGB BO 099/10 refers to a Home Depot achieving a net rent of \$13.00 effective November 2008 and MGB BO 100/09 refers to an anchor store achieving a rent of \$12.53 September 2007. MGB BO 020/10 contains information respecting lease rates for a Canadian Tire and Wal-Mart at \$11.75 and \$13.00 respectively. A decision of the Calgary CARB relied on two rates of \$14.50 for a Canadian Tire and a Rona. The Respondent argued that Wal-Mart – First Pro lease rates should not be given any weight by the CARB as these are not arms length transactions. In support of this assertion the Respondent referenced a number of MGB board orders that have reached the same conclusion.

With respect to the Complainant's cost analysis, the Respondent provided evidence

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

showing that the actual cost reported by the owner for the subject construction is \$140 per square foot, not even close to the Marshall and Swift estimate of \$60.34 per square foot. Once land is factored in, the rental rate would have to be approximately \$15 per square foot to satisfy this level of investment. The Respondent also argued that the sale of the Wal-Mart property in Edmonton deserves little weight as this sale was not an arms length sale and also sold with restrictions respecting future use.

The Respondent referred the CARB to section 467 (3) (c) of the Municipal Government Act (Act) which sets out that the CARB must not alter an assessment that is fair and equitable considering the assessments of other similar properties in the same municipality. This has been interpreted to mean that equity is a matter for consideration of similar properties within the municipality and not with properties outside the municipality. MGB BO 099/10 clearly adopts this interpretation. The Respondent indicated that the board has accepted in many other cases that a hierarchy of rents based on considerations such as size, use, location and finish is appropriate. The CARB is asked to confirm the assessment of \$11,501,000 for the subject property which is down some 28% from the 2009 assessment.

Findings and Reasons:

The CARB placed very little weight on the Complainant's cost approach as the value produced is less than one half the actual costs reported by the owners. The direct sales comparison data brought forward is also not convincing partly because the Wal-Mart sale is not a clean market sale. Also the sales are too few and the fact that they are outside the Okotoks market led the CARB to conclude that they are not reliable market value indicators.

The lease analysis provided by the Complainant identifies seven of the ten comparables as national retailers and three are identified as Zellers stores. The CARB does not believe that Zellers stores are necessarily comparable with the subject property. These stores are usually not stand alone stores and are often anchors to mall oriented properties where anchor tenants are able to negotiate preferred rental rates and reduced cam costs. The Board is not prepared to place much weight on the other seven comparables as they are not identified and it is very difficult to know to what degree these properties may be similar to the subject. These rates appear to be very low and without the opportunity to review the actual leases the CARB could not determine if other factors may be influencing the face rates stated in the Complainant's analysis. The CARB also had difficulty placing much weight on the Respondent's basis for the rental rate applied in reaching the assessment. No rate analysis was offered and extracting rates cited in various review board decisions without providing the background for these leases was not persuasive.

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

With respect to the question of equity in rates, the CARB is constrained to only consider evidence which relates to equity within the Town of Okotoks. Section 467 of the Act sets out the scope of equity considerations as being those properties similar to the subject and within the same municipality. MGB BO 099/10 clearly follows this interpretation as do a number of other MGB decisions. The CARB has carefully reviewed the equity evidence of both parties and has determined that the \$12 per square foot rate assigned to the subject appears to be out of step with other comparable rates. Both parties agreed that grocery store rental rates are typically higher than the rates for other big box stores. The CARB has therefore focused on the rate for Costco at \$11.00 per square foot and Wal-Mart at \$10.25 per square foot. While we understand the Assessor's suggestion that size may have an impact on rental rates, the CARB was not provided with any evidence as to where such economies of sale take effect. The subject property is a large big box store at 85,250 square feet and while both Costco and Wal-Mart are larger, the Board is of the opinion that rental rates for these large retail outlets would be fairly close. The CARB was also somewhat persuaded by the assertion that the \$12 rate for the Okotoks Home Depot is the highest rate in the province. This was not refuted by the Respondent.

The CARB has not placed great weight on this observation; however the fact that many other review boards across the province have concluded rates in the \$8 to \$10 range for similar properties does cause some concern as to why a \$12 rate has been applied in Okotoks. In the final analysis the CARB decided that allowing a minor influence on the rate for size, a rate somewhat above the Wal-Mart rate of \$10.25 would be reasonable from an equity standpoint. The Board therefore has set the rental rate for the subject at \$11 per square foot which happens to be equivalent to the Costco rate.

Decision Summary

Based on the decision of the CARB to set the rental rate for the subject at \$11 per square foot, the resulting value for 2010 is reduced to \$10,528,000.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 15th day of November 2010.



Paul G. Petry
Presiding Officer

OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER 0238/13/2010-M

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*