

IN THE MATTER OF A COMPLAINT filed with the Town of Okotoks Assessment Review Board pursuant to the *Municipal Government Act (MGA)*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000.

BETWEEN:

Alain's Shoe Repairs Ltd - Complainant

- and -

Town of Okotoks - Respondent

BEFORE:

G. Sokolan, Presiding Officer

A. Eastham, Board Member

R. Nix, Board Member

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

| Roll Number | Address | Assessment |
|--------------------|------------------------|-------------------|
| 0010060 | 3, 87 Elizabeth Street | \$2,197,000 |

This complaint was heard on the 30th day of July 2024 via video conference.

Appearing on behalf of the Complainant:

- B. Foden, Altus Group Limited

Appearing on behalf of the Respondent:

- C. Van Staden, Assessor
- R. Beckner (observer only)

Attending for the Assessment Review Board:

- P. Huber, Clerk

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Procedural Matters

- [1] The parties stated they had no objections to the Board as constituted.
- [2] The Respondent requested information to be carried forward to this complaint from the complaint for Roll 0122100 (10 D'Arcy Ranch Drive) pertaining to:
- Proceedings Before Assessment Review Boards;
 - Possible Grounds for Complaint; and
 - Assessment Fairness and Equity.
- [3] The Board agreed to this request.
- [4] There were no other procedural or preliminary matters raised. The Board proceeded to hear the merit arguments of the complaint.

Background

- [5] The property under complaint (subject) is a 19,776 square foot (sf) (0.454 acre) parcel known as Alains Shoe Repairs, located at Unit 3, 87 Elizabeth Street. It is zoned Downtown District. It is improved with a 9,120 sf Multiple Occupancy Industrial Retail Condominium building with a site coverage of 46%. The building was constructed in 1978 and contains nine (9) condominium units demised to accommodate six (6) tenants. Three (3) building permits were issued for renovations; two (2) in 2022 and one (1) in 2023.
- [6] The property sold in January 2021 for \$1,889,000. It has been assessed using the Income Approach to valuation for \$2,197,000.

Issue

- [7] Should the subject's assessment be adjusted to reflect the January 2021 sale price of \$1,889,000?

Complainant's Position

- [8] The Complainant clarified there is a single assessment for nine (9) units registered in Condominium Plan 7810537. All of these units sold as a single entity in January 2021 for \$1,889,000.

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- [9] Referencing *Altus Group Ltd v Alberta (City of Edmonton Composite Assessment Review Board)*, 2023 ABCA 35 and *697604 Alberta Limited v Calgary (City of)*, 2005 ABQB 512), the Complainant argued the sale price of the subject is the best reflection of the subject's current market value. In support of this argument, the Complainant submitted a copy of the land title for one (1) of the units and Transfer of Land document #211025691 registered at Land Titles on January 28, 2021 showing all nine (9) units sold in one (1) transaction for \$1,889,000. In questioning by the Complainant, the Respondent characterized the subject sale as being a valid, arm's length sale.
- [10] In summary, the Complainant questioned why the sales prices used to determine the CAP rate (CAP rate sales) were not time adjusted. The Respondent indicated the CAP rate had been decreased on an overall basis throughout the municipality from the previous assessment year to recognize that real estate sales had increased by approximately 17% over that period. This change to the CAP rate negated the need for the sales used in the analysis to be time adjusted.
- [11] The Complainant also noted the use of the actual sale as the best indicator of market value is supported by the fact that there are only three (3) sales of condominiums in the CAP rate sales. This is an insufficient sample to derive a realistic CAP rate to apply to this type of property.
- [12] In summary, the Complainant requested the Board give little weight to the subject's actual and assessed rental rates derived by the Respondent. The sale of the subject presents the best market value evidence.
- [13] As well, the Complainant asked the Board to disregard the fact the previous year's assessment was not appealed. Assessments are prepared on an annual basis and last year's assessment is irrelevant to this complaint.

Respondent's Position

- [14] The Respondent clarified all nine (9) condominium units are combined into one (1) roll number on the 2023 tax roll. The Respondent received a partially completed 2023 ARFI return, which accounted for 7,080 sf of the 9,120 sf building. From this, the Respondent indicated it was able to determine gross rents for the spaces that accommodate the current five (5) tenants. These rents ranged from \$28.15/sf to 56.16/sf, presenting an average gross rent of \$40.26/sf. Approximately 55% of the building was vacant at the time the ARFI was returned, and the Respondent surmised renovations to this space was the subject of the building permit taken out

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in 2023. Attributing no income to the vacant space, the Respondent calculated an actual gross operating income of \$164,322 and an actual net operating income of \$131,666, using operating costs provided on the ARFI.

- [15] For assessment purposes, all units have been similarly assessed at a rent of \$18/sf and a 5% vacancy rate, operating cost allowance of \$10, a 2% non-recoverable allowance. A CAP rate of 6.75% has been applied to arrive at the assessed value of \$2,196,636. This represents a 16% increase over the 2021 sale price and an 11% increase over the previous year's assessment. The Respondent noted the Complainant had not appealed the previous year's assessment.
- [16] The CAP rate was determined through analysis of 15 sales occurring in Okotoks between October 2022 and June 2023. The median of the indicated CAP rate of these sales was 5.8% and a rate of 6.75% was employed for the subject.
- [17] The Respondent identified two (2) reasons why it had not used the subject sale price as the best indication of market value for a recent sale, as suggested in *697604 Alberta Limited v Calgary (City of)*, 2005 ABQB 512).
- [18] The first of these reasons was because the sale of the subject can no longer be considered recent, and it is no longer comparable to the property that sold. The sale occurred in January 2021, 2½ years before the valuation date. During that period, the value of the subject has increased as a result of renovations done under building permits issued in 2022 and 2023.
- [19] In questioning, the Respondent indicated it had not included the actual building permits or even an indication of the value of the permits, in its disclosure because it did not feel it was necessary. The Respondent suggested the value may have been in the order of 25,000 to \$30,000.
- [20] The second reason for not recognizing the sale as the best indicator of market value is the increase in real estate prices that occurred during that time. The Respondent stated market prices in Okotoks have increased substantially over the past two (2) years; between the 2022 and 2023 assessment years, values have increased in the range of 17% and during the previous year, increases were over 8%. Undoubtedly, the property has increased in value and an assessment based on the sale would under-value the subject.

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Decision

[21] The subject assessment is reduced to \$1,889,000 to reflect the January 2021 sale price.

Reasons

[22] In coming to a decision on this complaint, the Board finds it is handicapped by a lack of information as introduced by both parties.

The Complainant

[23] The only evidence contained in the Complainant's disclosure was the 2024 Notice of Assessment, exterior photos of the subject, a certificate of title for one (1) of the subject's condominium units, and the Transfer of Land documents for the sale. The only confirmation the Board had that the sale was a valid, arm's length sale was the Respondent's answer to a question asked by the Complainant.

[24] The Complainant relied exclusively on the sale price of the subject to support its requested adjustment to the assessment. No other market evidence was submitted in support of the requested value.

The Respondent

[25] In its disclosure, the Respondent provided a summary of the assessment calculation identifying the total assessed area, the assessed rent rate applied to the total area, the vacancy, operating cost and non-recoverable allowances, and the applied CAP rate. The property report for the subject was not included, which would have allowed the Board to validate this summary information.

[26] No supporting information was provided to substantiate the typical market rent of \$18/sf applied to the identified rental spaces within the complex. The Respondent only identified that any ARFI response rent rate information was sorted by space type, location, and if there were enough rents, by quality. Relative to the subject, it was not identified what space type the subject was assigned to, how many returns indicated rents for this space type, or what the median value of rents identified in that space category was. It was not possible for the Board to determine how comparable or relevant this information was to the subject.

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- [27] A summary of information received from the ARFI return was provided, in place of the actual return. The Respondent's disclosure indicated the return was not complete, accounting for only 7,080 sf of the 9,120 sf that exists in the condominium complex and identifying five (5) current tenants, the building area they occupied, the lease start dates, and the rents being applied to these spaces. In order to derive an actual Net Operating Income (NOI) for the subject, the Respondent was left with the task of deriving the balance of the information such as estimating the actual vacant space existing in the complex at the time and whether the leases were being administered on a gross or net basis. The Board finds it cannot rely on this portrayal of the current income and operating status of the subject – as a result, the Board cannot compare the actual NOI to the assessed NOI and use this to test the reasonableness of the applied typical rent rates.
- [28] The Respondent submitted three (3) building permits were issued, two (2) in 2022 and one (1) in 2023, to undertake renovations to the subject. The building permits were not included in the Respondent's disclosure. The Board could not verify the Respondent's suggested value of \$25,000 to \$30,000 of these permits. No additional evidence was provided to quantify the increased value the subject realized as a result of these renovations or if they resulted in improvements that would have been considered as of the condition date of December 31, 2023.
- [29] The Respondent identified the increase in real estate values in Okotoks as being an important consideration when determining if the January 2021 sale of the property was a reasonable indicator of market value, stating that the market indicates there has been at least a 25% increase in market values since the subject sale. An indication of this increase could have been observed from the 15 sales the Respondent relied upon in its CAP rate analysis for the 2023 assessment year as these sales occurred between February 2022 and June 2023. However, the price at which these sales transacted was not time adjusted to reflect the valuation date. This provided the Board with no indication of how the value of each property had increased relative to the sale date.
- [30] Additionally, the sales information was compiled in the Respondent's disclosure package in a manner that precluded the Board from identifying how these sales could be compared to the sale of the subject. While the address, sale date, and price of each sale was included, the Board had no indication of how the improvements (e.g. age, condition, size) was reflected in each sale, or the zoning, size, or location of the property could be compared to the subject and to its January 2021 sale.

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[31] The Respondent did provide the subject's assessment from the previous year and stated this assessment had not been appealed. The Board finds such a statement does not imply the Complainant's agreement with the previous assessment. At best, it implies the previous assessment had not been appealed for any number of different reasons.

Conclusion

[32] On balance, the Board is reluctant to use a dated, two (2) year old sale to reflect the market value of the subject as of the valuation date. However, given the evidence provided, the Board concludes the subject's January 2021 sale price of the subject represents the best indication of its current market value.

[33] The assessment is reduced to \$1,889,000 to reflect the January 2021 sale price.

Dated at the Town of Okotoks in the Province of Alberta this 27th day of August 2024.

---Original Signed---

G. Sokolan
Presiding Officer

APPENDIX "A"
DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|-----------------|--------------------------|
| C-1 (184 pages) | Complainant's Disclosure |
| R-1 (50 pages) | Respondent's Disclosure |

LEGISLATION

MGA, RSA 2000, c M-26

s 1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,*
- (b) the procedures set out in the regulations, and*
- (c) the assessments of similar property or businesses in the same municipality.*

An application for Judicial Review may be made to the Court of King's Bench with respect to a decision of an assessment review board.

An application for Judicial Review must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision, and notice of the application must be given to

- (a) the assessment review board*
- (b) the Complainant, other than an applicant for the judicial review*
- (c) an assessed person who is directly affected by the decision, other than the*

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- Complainant,*
- (d) *the municipality, and*
 - (e) *the Minister.*