

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:

1684276 Alberta 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 |
|--------------------|-------------------------------|-------------------|
| 0076010 | 241-263, 200 Southridge Drive | \$9,509,000 |

This complaint was heard on the 29th 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

COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/07/2024

Procedural Matters

- [1] The parties stated they had no objections to the Board as constituted.
- [2] There were no procedural or preliminary matters raised. The Board proceeded to hear the merit arguments of the complaint.

Background

- [3] The property under complaint (subject) is a 110,642 square foot (sf) (2.54 acre) multi-occupancy retail parcel, located at 241-263, 200 Southridge Drive, known as Riley Mall. It is improved with two (2) buildings, constructed in 2008, accounting for a site coverage of 23%. The two (2) buildings account for 24,057 sf. The smaller building of 6,214 sf comprises four (4) restaurants; the larger building of 17,843 sf is demised into three (3) restaurants and eight (8) retail spaces less than 7,500 (<7,500) sf. The subject has been assessed using the Income Approach to valuation for \$9,509,000.

Issues

- [4] Would the subject be more fairly assessed if restaurants were assessed at a market rent of \$27/sf and the retail space between 3,000 sf and 9,999 sf were assessed at \$21.50/sf?

Complainant's Position

- [5] The Complainant contends the subject is over assessed. The subject's Property Report shows an assessed effective gross income (EGI) of \$642,974. The Complainant provided a table titled "Effective Gross Income Comparison" showing the annual rent of each tenant, indicating the subject's actual EGI is \$513,071, and argued this represents an over assessment of 25.32%. This table indicates a retail space of 5,182 sf is vacant with no annual rent recorded.
- [6] The Complainant contends if restaurants were assessed at \$27/sf and the one (1) retail space over 3,000 sf in size was assessed at \$21.50/sf, this over assessment would be reduced to 12.00%.

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Restaurants

- [7] There are seven (7) restaurants in the subject shopping mall and the six (6) most recent leases amongst these indicate a median lease rate of \$27/sf rather than the currently assessed rate of \$32/sf. The leases were executed between July 1, 2018 and July 1, 2021. The lease not included in this analysis is dated, having begun on January 6, 2009 at a rate of \$32.50.
- [8] The Complainant submitted these six (6) leases are a large enough sample to justify a \$27/sf lease rate. However, the Complainant introduced a larger sample of 18 restaurants located in seven (7) retail centres in the municipality with leases contracted between July 1, 2018 and March 1, 2022, ranging from \$22/sf to \$34/sf with a median of \$28/sf. Restaurants located at the subject are included in this sample.

Retail Space Greater than 3,000 SF

- [9] There is one (1) retail space at the subject that is 5,172 sf in area. All other retail spaces occupy an area less than 3,000 sf. The Respondent's current stratification for retail spaces accounts for all spaces less than 7,500 sf to be assessed at a typical rent of \$25/sf. The Complainant contends to apply the same rent rate to this whole category is not a typical approach. It equalizes the rent between a space that is less than 1,000 sf with a space more than five (5) times its size. Generally, the larger space would be assessed far less on a sf basis.
- [10] The Complainant introduced a sample of five (5) leases for retail spaces between 3,000 sf and 9,999 sf located within the municipality, supported by exterior photographs and property records for each location. The median lease rate is \$21.50/sf and the Complainant requested this rate to be applied to the 5,172 sf retail space in the subject.

Respondent's Position

- [11] The Respondent provided a table of actual rents and annual incomes for the subject extracted from its 2023 Assessment Request for Information (ARFI) return, showing a gross income of \$600,995 compared to the Complainant's \$513,071. These figures include an annual income of \$87,924 for the 5,172 sf retail space, which the Complainant recorded as vacant with no annual rent attributed to it. The Respondent testified this space has been sublet to a different tenant who has assumed the existing lease for \$17/sf.

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- [12] The Respondent indicated actual lease rates obtained from ARFI responses from properties in the main commercial area of the municipality (excluding North Gateway and Downtown) executed since 2019, were analyzed and categorized by different space types, sorted by location and, where possible, by quality. Median lease rates in each category were used to derive typical assessed lease rates that were then used to generate individual property assessments.
- [13] The lease analysis indicated:
- Rents for restaurant space: there are 14 current leases ranging from \$22/sf to \$39/sf. The median rent rate is \$31/sf. The typical rent for restaurants was set at \$32/sf.
 - Rents for retail space <7,500 sf: there are 58 current leases ranging from \$16/sf to \$39/sf. The median rent rate is \$28/sf.

Restaurants

- [14] The Complainant's sample of 18 restaurants is not synonymous with the 18 leases analyzed in the Respondent's lease analysis. The Respondent noted the lease for one (1) restaurant in the Complainant's sample dated from 2006 without a renewal date; another lease was for a restaurant located in an area of town that is not comparable with the subject; and three (3) of the leases began prior to 2019. These leases were not included in the Respondent's analysis.
- [15] Further, the Respondent identified five (5) additional leases executed between 2019 and 2023 that were not included in the Complainant's sample, with rates ranging between \$28/sf and \$33/sf. If the dated and incomparable leases are omitted from the Complainant's sample and the additional five (5) leases are added in, the median of the Complainant's sample becomes \$31/sf. This contrasts with the typical assessed market rent, which was determined to be \$32/sf.

Retail Space Greater than 3,000 SF

- [16] As noted, the Respondent has assessed all retail spaces less than 7,500 sf in area in a singular category with a typical assessed rent of \$28/sf. This rate has been adjusted to reflect a \$25/sf rent for this lease type in the subject.

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Decision

[17] The current assessment of \$9,509,000 is adjusted to \$8,712,198, truncated to \$8,712,000.

Reasons

[18] The Board accepts the Respondent's calculation of the actual EGI for the subject at \$600,995 and the assessed EGI of \$642,974, indicating the subject is under performing the market by approximately 7%.

[19] The Board concludes the subject is disadvantaged when compared to the balance of the retail market in the municipality. Given the evidence provided, the cause of this disadvantage cannot be specifically identified, but is evident from the comparison of its actual EGI of \$600,995 to its assessed EGI of \$642,972, a difference of approximately 7%.

Restaurants

[20] As noted, there are a total of seven (7) restaurants currently operating at the subject. The age of the restaurant leases range from 2018 to 2021. Given the five (5) year window used by the Respondent to analyze typical rents, the Board determined the leases beginning in 2018 should be eliminated from this sample, leaving a sample size of five (5). These leases are realizing rents between \$25/sf to \$32/sf, with a median of \$26/sf. The Board determines this sample of five (5) restaurants is sufficiently large to generate a typical rent rate. The \$26/sf median rate of this sample supports the requested rate of \$27/sf and reflects the ability of the subject location to attract restaurant tenants capable of producing a \$27/sf rent.

Retail Space Greater than 3,000 SF

[21] The Complainant presented evidence indicating the rent for the one (1) retail space of 5,172 sf should be considered as part of a different space type than those used by the Respondent. In the 2024 taxation year, the Respondent considered all retail spaces <7,500 sf similarly, with an assessed rent for the subject of \$25/sf. The Complainant suggested it is typical to consider retail spaces between 3,000 sf and 9,999 sf in a single category, indicating those small retail spaces under 3,000 sf typically generate a higher revenue/sf than spaces over 3,000 sf.

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- [22] Market evidence available to the Board to test this assumption is limited to the lease rates being achieved at the subject property and the comparables introduced by the Complainant. Given the evidence available, the Board isolated the subject's retail spaces under 3,000 sf. The Board finds these spaces generate a median rent of \$25/sf which equates to the typical rent the Respondent has used for spaces <7,500 sf.
- [23] The sample of five (5) comparable retail spaces sized between 3,000 sf and 9,999 sf introduced by the Complainant ranges from 3,049 sf to 9,165 sf in size. The Board finds the inclusion of a retail space at 9,125 sf to be an outlier. It is almost double the size of the retail space under complaint at the subject, and 5,117 sf larger than the median of the remaining comparables (4,048 sf).
- [24] If this comparable is removed from the sample, the sample size is reduced to four (4) retail spaces all of which fall within the space type of <7,500 sf used by the Respondent. The Respondent indicated its lease analysis for retail spaces <7,500 sf had a sample size of 56 leases. The Board acknowledges this space type covers a wide range of retail area, but with the evidence presented, the Board has no understanding of what percentage of these 56 leases are over 3,000 sf. In contrast to the situation with restaurants at the subject, these leases are not concentrated in one shopping mall, where the Board determined some characteristics of that mall could account for underperformance of the restaurants.
- [25] The Board concludes there is not enough evidence to support the Complainant's request. On balance, the Board finds the Respondent's space type of retail properties <7,500 sf at a typical rent of \$25/sf fairly represents the market value of retail spaces at the subject.

Summary

- [26] The Board finds the typical rent rate for restaurants at the subject should be amended from \$32/sf to \$27/sf. Additionally, the typical rent of \$25/sf reasonably represents the market value of the 5,172 sf retail space at the subject. No change to the assessed rate of this space is warranted. When these findings are incorporated into the subject assessment, the assessed EGI is reduced to 1.8% below the actual EGI being achieved.

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[27] Accordingly, the assessment of the subject property is adjusted to \$8,712,198, truncated to \$8,712,000.

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 (172 pages) | Complainant's Disclosure |
| R-1 (42 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 Complainant,*
- (d) the municipality, and*
- (e) the Minister.*