

**OKOTOKS COMPOSITE ASSESSMENT REVIEW BOARD ORDER #0238/12/2010-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:**

Loblaw Properties West Inc., Complainant

- and -

The Town of Okotoks, Respondent

**BEFORE:**

P. Petry, Presiding Officer  
R. May, Member  
J. Tiessen, 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 and entered in the 2010 Assessment Roll as follows:

<b>Roll Number</b>	<b>Address</b>	<b>Assessment</b>
<b>Roll Number: 0032580</b>	<b>9 Sandstone Gate</b>	<b>\$5,636,000</b>

This complaint was heard on the 21st day of October, 2010 at the Town of Okotoks Council Chambers at 5 Elizabeth Street, Okotoks, Alberta.

Appearing on behalf of the Complainant:

- Altus Group Limited (Agent for the Complainant) – No one attended

Appearing on behalf of the Respondent:

- P. Huskinson

Attending for the ARB – Linda Turnbull, ARB Clerk and Diane Scott, Assistant

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### **No Attendance by Complainant**

The Altus Group did not appear for attendance at the hearing of this matter. Section 463 of the Municipal Government Act (Act) requires that the CARB proceed with the hearing provided the parties have been notified. In this case the disclosure of the Complainant clearly showed the time and date of the hearing and therefore the CARB proceeded with the hearing on October 21, 2010.

### **Property Description and Background:**

The subject property is assessed as a 31,826 sq. ft. No Frills grocery store located at northern edge of Okotoks along Highway 2A. The subject also has 709 sq. ft. of mezzanine space. This is a stand-alone store with no other nearby retail. The primary issues in this complaint appear to be the size of the main floor and the rental rate used to value the mezzanine space.

### **Issues:**

1. What is the correct, fair and equitable market rental rate for the mezzanine space within the subject property?
2. What is the correct size of the subject?

### **Board's Findings in Respect of Each Matter or Issue:**

1. The correct, fair and equitable rental rate for the mezzanine space within the subject is \$10 per sq. ft.
2. The correct size of the subject is 30,761 square feet.

### **Summary of the Partys' Positions**

#### **Complainant:**

The Complainant was not in attendance at the hearing of this complaint, therefore the CARB has attempted to understand its evidence without the benefit of explanation or argument. The complaint form shows two matters concerning the assessment notice, those being the amount of the assessment and the classification of the property. No explanation or evidence had been submitted respecting the matter of classification and therefore the CARB has not addressed this matter.

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The Complainant submitted various documents showing the square footage of the subject property to be 29,592 square feet for the main floor. The Complainant used 29,592 square feet in their pro-forma and therefore the CARB accepts this to be the Complainant's proposal respecting the question of size.

The Complainant submitted numerous documents which appeared to outline the methods and rates respecting primarily the City of Calgary's approach to the assessment of mezzanine space. This evidence titled "Mezzanine Space Equity Examples" showed that the City of Calgary generally assigns a nominal value of \$1 per square foot for mezzanine space. The Complainant has also adopted the nominal value of \$1 per square foot in its proposed pro-forma. The Complainant's recommendation of value adopts the Respondent pro-forma values with a change in square footage to 29,592 and a change in rental rate for the mezzanine space from \$10 per sq. ft. to \$1 per sq. ft. These changes result in the Complainant's proposed value for the subject of \$5,199,800.

### **Respondent:**

The Respondent indicated that while the Complainant has used 29,592 sq. ft. as the size of the subject, the Respondent visited the subject property on June 25, 2010 and re-measured the store. The revised size based on these measurements is 30,761 square feet for the main floor and no change to the mezzanine space at 709 square feet. The Respondent recommended that the CARB adopt this revised size of 30,761 sq. ft.

The 709 square feet of mezzanine space is assessed at a rate of \$10 per sq. ft. The Respondent argued that this space must be assessed from a legal perspective and has value and utility to the owner. The Respondent indicated that all mezzanine space within similar properties in the Town of Okotoks is assessed. The Respondent brought forward eight examples of mezzanine space where the assessed rates ranged from \$5 per sq. ft. to \$27 per sq. ft. A number of Municipal Government Board decisions were referred to where mezzanine space was decided to have more than a nominal value. Mezzanine space within the Sobeys store is assessed at \$12 per square foot and the \$10 rate applied to the subject should be found to be fair and equitable.

### **Findings and Reasons:**

The CARB considered the evidence relating to the size of the improvement and noted that the documents brought forward by the Complainant were likely prepared during the planning phase and therefore may not be representative of what was actually built. There may also be some differences between the parties in terms of the method of measurements used. Without some explanation on the information brought forward by the Complainant, the CARB was persuaded to adopt the Respondent's recent determination of size at 31,761 sq. ft.

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The CARB considered the evidence of the Complainant respecting the rental rate for mezzanine space which was from outside the Town of Okotoks. Section 467(3) the Municipal Government Act (Act) provides that an assessment review board must not alter an assessment that is fair and equitable taking into consideration the assessments of similar properties within the same municipality. The Complainant provided no analysis of comparable mezzanine space and rates applied within the Town of Okotoks. The comparables from outside the municipality are only marginally relevant and the CARB did not place much weight on this evidence. Based on the Respondent's comparables and the consistent practise of assessing mezzanine space within the Town of Okotoks the CARB finds that the \$10 rate applied to the subject is correct, fair and equitable.

### **Decision Summary**

The decision of the CARB is to reduce the assessed value of the subject to \$5,460,000 based on the Assessor's size calculation of 30.761 sq. ft.

No cost to either party.

It is so ordered.

Dated at the Town of Okotoks in the Province of Alberta, this 2<sup>nd</sup> day of November 2010.



Paul G. Petry  
Presiding Officer

**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;*

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- (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*