TOWN OF COCHRANE

COMPOSITE ASSESSMENT REVIEW BOARD ORDER

IN THE MATTER OF COMPLAINTS filed with the Town of Cochrane Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act,* c. M-26 RSA 2000 (*Act*).

BETWEEN:

Millrise Deer Valley LP Investment Corp.
as represented by Altus Group Limited

Complainant

AND:

Town of Cochrane

Respondent

BEFORE:

H. Kim, Presiding Officer
L. Gale, Member
P. Mellor, Member

Secretariat:
K. Babin, Clerk

This is the decision of the Town of Cochrane Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Cochrane and entered in the 2022 assessment roll as follows:

Roll No: 310010
Address: 200 Fifth Avenue W
Assessment: $2,070,500

This complaint was heard on the 7th day of September 2022, at the Town of Cochrane Council Chamber at 101 Ranchehouse Road, Cochrane, Alberta.

Appeared on behalf of the Complainant: A. Izard, Altus Group

Appeared on behalf of the Respondent: R. Lodermeier, Town of Cochrane
G. Butz, Town of Cochrane

PROPERTY DESCRIPTION AND BACKGROUND

[1] The subject property, a 4,102 square foot (SF) free standing bank building, was constructed in 1997 on a 0.84 acre parcel within the Points West Centre in the Fifth Avenue Shopping District of the Town of Cochrane (Town). It is assessed on the income approach based on a lease rate of $36/SF for Commercial/Bank/Excellent, resulting in potential gross income (PGI) of $147,672. A vacancy allowance of 3% is deducted, resulting in an effective gross income (EGI) of $143,242. Operating cost shortfall based on $5/SF operating costs and non recoverables at 2% are deducted, resulting in net operating income of $139,762 which, capitalized at 6.75% results in the assessment under complaint.

ISSUES

[2] The complaint form contained a number of issues, but at the hearing the issues argued and considered were:

1. Should the lease rate be reduced to $34/SF?
2. Should the vacancy rate be increased to 6.0%?

Requested Assessment: $1,885,100

COMPLAINANT'S POSITION

Lease rate

[3] The Complainant noted that the subject lease was renewed in October 2017 for $34/sf. Further, two similar bank buildings in close proximity to the subject, constructed in 2001, of 3,550 SF and 5,550 SF, had lease renewals commencing in May 2021 and October 2021 for $35.33 and $32.00/SF respectively. Lease renewal negotiations typical start 6 months before expiry; therefore, the October 1, 2021 rate would be reflective of market value at the July 1, 2021 valuation date. The mean and median of the three leases are $33.67/SF and the weighted mean is $33.30/SF. Typical market leases support the requested assessment of $34.00/SF.

[4] The Complainant also presented a secondary market analysis with three additional lease rates for banks in the Town of Okotoks, which has a 2021 population very close to that of the Town. The three properties were constructed between 2002 and 2008 and had lease commencement dates from September 2016 to September 2018 for $31 to $33/SF. The secondary market lease rate analysis also supports the requested lease rate.

[5] The lease rates presented by the Respondent should not be considered as there was insufficient detail to determine whether they were, in fact, comparable. The Complainant presented *South County Co-op Limited v. City of Medicine Hat* CARB-0217-031/2021 in which the CARB found the respondent failed to disclose evidence in sufficient detail to allow a complainant to respond to or rebut the evidence at the hearing, and the respondent's refusal to provide evidence, based on the protection of privacy, to be unfounded.

Vacancy

[6] The Complainant presented a vacancy study for the subject shopping centre showing the July 31, 2021 rent roll which had two vacant CRUs for 6.4% vacancy. Accordingly, the Complainant argued that 6% vacancy should be applied for the subject assessment.

RESPONDENT'S POSITION

[7] The Respondent explained that the two key factors considered in assessing retail properties are the type of space and the quality. Assessment values are determined by mass appraisal, and groups of comparable properties are stratified in terms of overall desirability and marketability. Retail space is categorized into space types: Commercial Retail Unit (CRU), Grocery Store, Bank, etc. Quality classes are assigned to determine typical market rents, vacancy, operating expenses, and capitalization rates. Attributes considered in determining quality class include location, access, effective year of construction (YOC), physical condition, tenant mix, and rental rates achieved.

Lease rate

[8] The Respondent noted that the leases for the two banks in close proximity to the subject were not available for the lease rate analysis as the owner of the properties declined to respond to the annual Assessment Request for Information (ARFI) request, and also declined to confirm or deny the bank lease rates presented by the Complainant. The bank lease rates were set based on four bank leases known to the Respondent with leased areas of 2,576 SF to 8,328 SF and start dates from October 1995 to December 2018. The lease rates ranged from $34.00 to $40.00/SF and were the basis on which the $36.00/SF market rate was applied. Even if the two leases presented by the Complainant were included in the analysis, the average and median would be $35.89 and $35.67/SF respectively, supporting the rate applied. The Respondent presented CARB and MGB decisions stating that evidence from other municipalities have limited utility; therefore, the lease rates from the Town of Okotoks should not be considered.

Vacancy

[9] The Respondent described the process for determining typical vacancy, which is attributable to vacancy, tenant turnover, nonpayment of rent or other income over a given period assuming current market conditions and typical management. Vacancy statistics are determined from ARFI responses from property owners which indicate occupied and vacant units as well as income and expenses. In addition to compiled ARFI data, properties are inspected. Those under construction are not included in the calculations, but spaces that have applied for tenant improvement permits as of July 1 of the assessment year are considered occupied as they are no longer available for lease.

[10] The Respondent presented the 2022 Retail Vacancy Analysis which listed for the three year period from 2019 to 2021 each retail space with the roll number, size, and whether or not the space was vacant. For Excellent quality space, the 3-year average was 6.33% and the vacancy applied was 3.00 to 5.00%. The vacancy rate selected for banks were the low end of the range as they are all leased and there is in fact zero vacancy for bank buildings. Nevertheless, the Respondent recommended that a 6.00% vacancy rate be applied in the interest of equity. With this change the recommended assessment is $1,997,100.

DECISION

[11] The assessment is reduced to $1,955,000.

REASONS

Lease rate

[12] The Respondent's lease rates did not provide sufficient details to determine the comparability of the spaces, lacking details with respect to material items such as location, type of space such as whether it was free standing, with or without drive-through, or year of construction. The lease commencement dates were very dated, and while the Respondent noted verbally that there had been renewals since the original lease start date, this evidence was not disclosed, and it was unclear whether the lease rates noted were the original lease rate or renewal rates. Further, the sizes of the space were significantly different from the subject. Accordingly, the CARB determined that the three leases submitted by the Complainant (the subject and the two bank leases in close proximity) were the most compelling. While one of the leases commenced on October 1, 2021 after the valuation date, the CARB accepts the evidence of the Complainant, that was not disputed by the Respondent, that lease renewal negotiations typically start six months prior to expiry, and would be expected to reflect market rates at the valuation date. The average and median of the three leases are $33.78 and $34.00/SF respectively, and support the Complainant's request of $34.00/SF.

Vacancy

[13] The CARB does not agree that the actual vacancy of the shopping mall should set the typical vacancy for the subject and did not find the Complainant's analysis compelling. The CARB also considered the recommendation of the Respondent but determined that in view of the zero typical vacancy rate for bank buildings, it would not be reasonable to increase the vacancy rate for the subject property from the 3% assessed. The Board is of the opinion that space types should be stratified, and the vacancy rate of a typical CRU should not necessarily be applied to a bank building. Based on the evidence provided, the CARB determined that the vacancy rate used in the assessment should not be varied.

[14] Accordingly, the assessment is set based on $34.SF rental rate and 3.00% vacancy rate with all other income parameters unchanged.

Dated at the Town of Cochrane, in the Province of Alberta, this 4th day of October, 2022.

Karen Babin for

H. Kim, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE CARB:

NO.	ITEM
C1	Complainant Disclosure
C2	Complainant Rebuttal *(not referenced in subject hearing)*
C3	Complainant Submission re. Surrebuttal *(not referenced in subject hearing)*
C4	Complainant Cases Referenced in Closing Argument
R1	Respondent Disclosure
R2	Respondent Surrebuttal *(not referenced in subject hearing)*

An application for judicial review of this decision may be made in accordance with the Municipal Government Act as follows:

470 (1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of Queen's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(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) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

TOWN OF COCHRANE

COMPOSITE ASSESSMENT REVIEW BOARD ORDER

IN THE MATTER OF COMPLAINTS filed with the Town of Cochrane Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act,* c. M-26 RSA 2000 (*Act*).

BETWEEN:

CP REIT Alberta Properties Limited
as represented by Altus Group Limited

Complainant

AND:

Town of Cochrane

Respondent

BEFORE:

H. Kim, Presiding Officer
L. Gale, Member
P. Mellor, Member

Secretariat:
K. Babin, Clerk

This is the decision of the Town of Cochrane Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Cochrane and entered in the 2022 assessment roll as follows:

Roll No: 310500
Address: 210 Fifth Avenue W
Assessment: $7,639,800

This complaint was heard on the 7th day of September, 2022, at the Town of Cochrane Council Chambers at 101 Ranchehouse Road, Cochrane, Alberta.

Appeared on behalf of the Complainant: A. Izard, Altus Group

Appeared on behalf of the Respondent: R. Lodermeier, Town of Cochrane
G. Butz, Town of Cochrane

PRELIMINARY MATTER - SURREBUTTAL

[1] The Complainant made an application to have the Respondent's surrebuttal submission struck from the record. Section 9 of Alberta Regulation 201/2017 *Matters Relating to Assessment Complaints Regulation, 2018* (*MRAC*) provides rules for disclosure:

> 9(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.
>
> (2) If a complaint is to be heard by a composite assessment review board panel, the following rules apply with respect to the disclosure of evidence:
>
> (a) the complainant must, at least 42 days before the hearing date,
>
> (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
>
> (b) the respondent must, at least 14 days before the hearing date,
>
> (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
>
> (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

[2] While *MRAC* does provide for the respondent to respond to or rebut the complainant's rebuttal evidence at the hearing, the previous sections likewise state "respond to or rebut the evidence at the hearing" but sets out in detail the timeline for submission of evidence and written argument. There is no detail with respect to submission of evidence or written argument for the respondent to respond or rebut at the hearing; therefore, this must mean that new evidence is not permitted to be entered at the hearing, and that any response at the hearing can only be oral. The Complainant presented several CARB decisions from the Cities of Red Deer and Grande Prairie in which the CARB decided that the absence of timelines for submission of surrebuttal means that surrebuttal documents were not intended, otherwise a disclosure timeline

would have been provided, and that MRAC indicates that a surrebuttal presentation should be verbal only.

[3] The Respondent stated that the purpose of the surrebuttal document was to provide documentation to demonstrate errors in the Complainant's rebuttal. The roll numbers included in the 2019 and 2020 vacancy study did exist at the time, but no longer existed when searched by the Complainant in 2022 because the parcel was subdivided. The area of the Canadian Tire building in the Complainant's vacancy analysis was the considerably larger new building at 55 Quarry Street and not the previous Canadian Tire building at 320 Fifth Avenue W. Under the circumstances, the Respondent argued that documentary surrebuttal was appropriate and necessary to rebut factual errors in the Complainant's rebuttal document.

DECISION - SURREBUTTAL

[4] The surrebuttal document will be allowed into evidence.

REASONS - SURREBUTTAL

[5] The purpose of the disclosure provisions within *MRAC* are to ensure procedural fairness. It provides for the respondent to respond to or rebut the complainant's rebuttal document at the hearing. The relevant provision in MRAC is enacted pursuant to Sec. 484.1(i) of the Act:

> 484.1 The Minister may make regulations
> …
> (h) respecting the procedures and functions of assessment review boards;
> (i) governing the disclosure of evidence in a hearing before an assessment review board;

[6] *MRAC* specifies procedures with respect to how and when evidence must be disclosed before hearings. The goal of the provisions is to encourage timely and full disclosure, and to ensure a fair hearing whereby the parties have an opportunity to be apprised of the case they have to meet. Where there are disputed facts in a complainant's rebuttal, it cannot have been the intent of the disclosure provisions to deny the respondent the ability to provide evidence at the hearing in support of their position. While the CARB must adhere to the specified disclosure requirements of *MRAC*, the specified disclosure rules need not be extended to include situations for which the rules are silent. The *Act* states:

> 464(1) Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.

[7] Accordingly, the CARB exercised its power to allow the evidence into the record. In this case, the Complainant was aware of the surrebuttal document as it had been provided prior to the hearing, but did not request an opportunity for submission of sur-surrebuttal. Had such a request been made, procedural fairness would dictate that it would have to be considered.

[8] In making that determination, the CARB notes that the specific facts of every case must be considered. There may be cases where surrebuttal is not reasonable, and other cases where both surrebuttal and sur-surrebuttal is warranted. Each case may differ, and previous CARB decisions are not binding. While the Complainant presented cases in which documentary evidence in surrebuttal was denied, there are also CARB decisions that allowed such evidence in surrebuttal - one example is *IORVL et al vs. Regional Municipality of Wood Buffalo*, CARB

2015/001, where both surrebuttal and sur-surrebuttal were permitted. As long as procedural fairness is maintained and the complainant is provided sufficient time to review the document, the CARB determined that surrebuttal evidence may be entered.

PROPERTY DESCRIPTION AND BACKGROUND

[9] The subject property is a 28,664 square foot (SF) grocery store located on a 3.37 acre parcel within the Points West Centre in the Fifth Avenue Shopping District of the Town of Cochrane (Town). It is assessed on the income approach based on a lease rate of $14.25/SF for Grocery Store/Average resulting in potential gross income (PGI) of $408,462 from which vacancy allowance of 7% is deducted resulting in an effective gross income (EGI) of $379,870. Operating cost shortfall based on $5.50/SF operating costs and non recoverables at 2% are deducted, resulting in net operating income (NOI) of $361,237 which, capitalized at 7.00% results in the assessment under complaint.

ISSUE

[10] The complaint form contained a number of issues, but at the hearing the issues argued and considered were:

1. Should the vacancy rate be increased to 15%?
2. If the vacancy rate is not adjusted, should the capitalization rate (cap rate) be increased to 8%?

[11] Requested Assessment: $6,760,140

COMPLAINANT'S POSITION

[12] The Complainant presented a Cochrane Anchor Vacancy Analysis showing six anchor tenants including the subject, two other grocery stores, Walmart and the current Canadian Tire store. The sixth anchor tenant in the analysis is the 57,315 SF space in Town Square, which was previously occupied by Canadian Tire and is now vacant. This vacant area represents 15.51% of the total anchor space in the Town; therefore, the vacancy rate should be adjusted to 15% instead of the 7% vacancy applied, which would result in an assessment of $7,002,200.

[13] The Complainant also presented a Capitalization Rate Analysis in support of the requested 8.00% cap rate. Two sales were included:

- the vacant former Canadian Tire at 320 5 Avenue W sold in May 2021 for $6,500,000 after marketing efforts to lease or sell starting in 2016 when Canadian Tire vacated to move into new premises. Its assessment at time of sale was $7,283,600. The assessed income parameters were a rental rate of $10.50, 7.0% vacancy, $5.50/SF operating costs and 2% non recoverables resulting in NOI of $526,421. On this basis, the sale price reflects a cap rate of 8.10%. The Complainant noted that if the cap rate were to remain at 7% the sale price would be supported if a 15% anchor vacancy rate were applied.
- the former MacArthur Fine Furniture building at 141 Gateway Drive NE in the City of Airdrie sold in June 2021 for $3,700,000. It was a court-ordered sale and was listed for some time; initially in 2017 with higher listing price which was dropped, and ultimately sold at a price significantly less than the assessment of $4,258,000. Based on the

income parameters applied by the City of Airdrie at the time of sale, which consisted of a rental rate of $9.50, 8.0% vacancy, $4.00/SF operating costs and 3% non recoverables for an NOI of $293,534, the sale price reflects a cap rate of 8.34%.

[14] The Complainant argued that these sales show that either the cap rate should be increased to 8% or the vacancy rate should be increased to 15% to reflect market value. The requested assessment is based on an 8.0% cap rate with other parameters unchanged, but a 15% vacancy with the cap rate unchanged would also reflect market value.

[15] In rebuttal, the Complainant noted that the Respondent's vacancy analysis included the area of the former Canadian Tire in the total inventory, but did not include it in the total vacant space. The Complainant argued that space is vacant when there is no revenue being generated, and the space in the former Canadian Tire should have been listed as vacant. A short-term, temporary occupancy should cause the space to be considered occupied. The Complainant also noted roll numbers in the Respondent's vacancy analysis in 2019 and 2020 that did not exist, as well as smaller spaces that the Complainant knew to be vacant that were shown as not vacant. The Respondent's vacancy analysis indicated overall vacancy in 2019, 2020 and 2021 at 4.61%, 5.23% and 5.44% respectively; however, if the bad roll numbers are removed, the actual vacancies corrected and the former Canadian Tire correctly noted as vacant, the overall vacancy in 2019, 2020 and 2021 would be 13.04%, 14.31% and 13.22% respectively.

[16] With respect to the restrictive covenant and limiting potential tenants of the former Canadian Tire store, the Complainant stated that such provisions are common in leasing, whereby there are agreements that no other similar tenant can lease another CRU space within the shopping centre. In *CP REIT v. City of Medicine Hat*, CARB 0217-026/2015, the CARB found the restrictive covenant was not so stringent as to disallow redevelopment, and that while certain department stores were not allowed, numerous others were. Further, Peavey, True Value and ACE are related parties, as are Lowes and RONA. The restrictive covenant does not cause the sale not to be reflective of market value. The Complainant stated that the sale is a valid, arms length market sale close to the valuation date, and should be considered in determining the income parameters in the valuation of the subject.

RESPONDENT'S POSITION

[17] The Respondent argued that the former Canadian Tire was an atypical sale, and was not actually vacant. The 2020 ARFI return indicated "Owner Occupied" and that there was a temporary occupant from July 2018 to April 2019. After the sale, it was demised and under construction – there were two development permit (DP) applications in March and June 2021 and seven building permit (BP) applications from June to October 2021. The Respondent only considers space to be vacant if it is available for lease; therefore, if a building permit application has been made, it is not considered vacant. After the sale in May 2021, the purchaser replied to the Sales Verification Questionnaire noting that the space was vacant at purchase and that an estimated $3,000,000 was intended for repairs and improvements. The Respondent conceded that the spaces for which the BP applications were made after the July valuation date should have been considered vacant, but did not agree that the Canadian Tire space in previous years should have been considered vacant as it might have been leased if not for the restrictions on potential tenants.

[18] The sale was subject to a restrictive covenant which stated that for a period of 30 years the purchaser will not permit the use of the property for the purposes listed, which included

department stores and stores selling automotive parts and supplies, sporting goods, home improvement or hardware, plumbing or electrical supply, paint or wallpaper, garden centre supply, or any similar wares. The list of permitted uses included junior department store, dollar store, pet store and pharmacy; however, it was clear that Canadian Tire as the owner of the land was restricting potential users, which would impact the leasing and sale of the property.

[19] The Respondent argued that the sale of the MacArthur Fine Furniture building should not be considered, as it was a court-ordered sale following bankruptcy. The Respondent presented excerpts from *Standard on Verification and Adjustment of Sales* published by the International Association of Assessing Officers (IAAO) which states that a foreclosure is not a sale but the legal process by which a lien on a property is enforced. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from the books. This was not a market sale, and further, it was a sale in a different municipality which may not be an indicator of sales in the Town.

[20] The Respondent argued that for the reasons cited, the two sales presented by the Complainant are atypical and not representative of the market. The sale at 120 Fifth Avenue W in May 2020 for $22,500,000 is within the Town and a better representation of typical market activity. It consisted of the Shoppers Drug Mart and three CRU buildings including upper level office and a bank. It was on four condominium plans but comprised one shopping centre. The Sales Verification Questionnaire stated the actual purchase cap rate was 6.0%, but application of typical income parameters resulted in a 6.38% cap rate. This sale supports the 7.0% cap rate applied.

[21] In surrebuttal, the Respondent defended their vacancy study noting the bad roll numbers were properties that had been subdivided and the new roll numbers were shown in the subsequent years. One of the demised spaces in the former Canadian Tire was Petsmart, for which the BP application was prior to July 1, 2021. The Respondent would not consider it to be vacant for 2021. The Respondent presented a study that showed that even if the former Canadian Tire was noted as vacant in previous years, the overall vacancy in 2019, 2020 and 2021 would be 9.59%, 10.13% and 8.53% respectively. The vacancy for 2021 would be 9.62% if Petsmart is noted as vacant.

DECISION

[22] The assessment is confirmed at $7,639,800.

REASONS

[23] The CARB considers the vacancy of the former Canadian Tire store to be atypical. The CARB agrees with the Respondent that typical vacancy should be based on spaces that are vacant and available for lease. Spaces that are under contract are not available for lease, and whether or not the space is generating income for the property owner at the valuation date, should not be included in the calculation of typical vacancy for mass appraisal using the income approach.

[24] In the case of the former Canadian Tire space, the CARB is of the opinion that if the pool of potential lessees had not been restricted to those that would not be competition for Canadian Tire, it would likely have been leased in a more timely fashion. As the land owner, Canadian

Tire chose to keep the property vacant awaiting a suitable user. Accordingly, the CARB finds that it would be appropriate to exclude the 57,315 SF of this space in both the total area of commercial space and the vacant area in the analysis. On this basis, the overall vacancy in 2021 would be in the order of 5.2%; therefore, the CARB determined that the 7.0% typical vacancy allowance should not be increased.

[25] For the same reason, the CARB is of the opinion that the former Canadian Tire space may have sold for more had the land owner not restricted the tenants that could occupy the space. Accordingly, the CARB gave more weight to the cap rate of the sale at 120 Fifth Avenue W in the Town. The CARB did not give weight to the sale in the City of Airdrie, as it was a court ordered sale in a different municipality. Based on the two sales in the Town, one at a cap rate of 6.38% and another given less weight at 8.10% the CARB determined that the 7.0% cap rate applied in the assessment should not be varied.

Dated at the Town of Cochrane, in the Province of Alberta, this 5th day of October 2022.

Karen Babin for

H. Kim, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE CARB:

NO.	ITEM
C1	Complainant Disclosure
C2	Complainant Rebuttal
C3	Complainant Submission re. Surrebuttal
C4	Complainant Cases Referenced in Closing Argument
R1	Respondent Disclosure
R2	Respondent Surrebuttal
R3	Respondent Surrebuttal (corrected numbers)

An application for judicial review of this decision may be made in accordance with the Municipal Government Act as follows:

470 (1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(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) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

TOWN OF COCHRANE

COMPOSITE ASSESSMENT REVIEW BOARD ORDER

IN THE MATTER OF COMPLAINTS filed with the Town of Cochrane Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act,* c. M-26 RSA 2000 (*Act*).

BETWEEN:

Crombie Property Holdings Ltd.
as represented by Altus Group Limited

Complainant

AND:

Town of Cochrane

Respondent

BEFORE:

H. Kim, Presiding Officer
L. Gale, Member
P. Mellor, Member

Secretariat:
K. Babin, Clerk

This is the decision of the Town of Cochrane Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Cochrane and entered in the 2022 assessment roll as follows:

Roll No: 320300
Address: 304 Fifth Avenue W
Assessment: $10,309,000

This complaint was heard on the 8th day of September, 2022, at the Town of Cochrane Council Chamber at 101 Ranchehouse Road, Cochrane, Alberta.

Appeared on behalf of the Complainant: A. Izard, Altus Group

Appeared on behalf of the Respondent: R. Lodermeier, Town of Cochrane
G. Butz, Town of Cochrane

PRELIMINARY MATTER - SURREBUTTAL

[1] The Complainant made an application to have the Respondent's surrebuttal submission struck from the record. Section 9 of Alberta Regulation 201/2017 *Matters Relating to Assessment Complaints Regulation, 2018* (*MRAC*) provides rules for disclosure:

> 9(1) In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.
>
> (2) If a complaint is to be heard by a composite assessment review board panel, the following rules apply with respect to the disclosure of evidence:
>
> (a) the complainant must, at least 42 days before the hearing date,
>
> (i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
>
> (b) the respondent must, at least 14 days before the hearing date,
>
> (i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
>
> (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
>
> (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.

[2] While *MRAC* does provide for the respondent to respond to or rebut the complainant's rebuttal evidence at the hearing, the previous sections likewise state "respond to or rebut the evidence at the hearing" but sets out in detail the timeline for submission of evidence and written argument. There is no detail with respect to submission of evidence or written argument for the respondent to respond or rebut at the hearing; therefore, this must mean that new evidence is not permitted to be entered at the hearing, and that any response at the hearing can only be oral. The Complainant presented several CARB decisions from the Cities of Red Deer and Grande Prairie in which the CARB decided that the absence of timelines for submission of surrebuttal means that surrebuttal documents were not intended, otherwise a disclosure timeline

would have been provided, and that MRAC indicates that a surrebuttal presentation should be verbal only.

[3] The Respondent stated that the purpose of the surrebuttal document was to provide documentation to demonstrate errors in the Complainant's rebuttal. The roll numbers included in the 2019 and 2020 vacancy study did exist at the time, but no longer existed when searched by the Complainant in 2022 because the parcel was subdivided. The area of the Canadian Tire building in the Complainant's vacancy analysis was the considerably larger new building at 55 Quarry St and not the previous Canadian Tire building at 320 Fifth Avenue W. Under the circumstances, the Respondent argued that documentary surrebuttal was appropriate and necessary to rebut factual errors in the Complainant's rebuttal document.

DECISION - SURREBUTTAL

[4] The surrebuttal document will be allowed into evidence.

REASONS - SURREBUTTAL

[5] The purpose of the disclosure provisions within *MRAC* are to ensure procedural fairness. It provides for the respondent to respond to or rebut the complainant's rebuttal document at the hearing. The relevant provision in MRAC is enacted pursuant to Sec. 484.1(i) of the Act:

> 484.1 The Minister may make regulations
>
> …
>
> (h) respecting the procedures and functions of assessment review boards;
>
> (i) governing the disclosure of evidence in a hearing before an assessment review board;

[6] *MRAC* specifies procedures with respect to how and when evidence must be disclosed before hearings. The goal of the provisions is to encourage timely and full disclosure, and to ensure a fair hearing whereby the parties have an opportunity to be apprised of the case they have to meet. Where there are disputed facts in a complainant's rebuttal, it cannot have been the intent of the disclosure provisions to deny the respondent the ability to provide evidence at the hearing in support of their position. While the CARB must adhere to the specified disclosure requirements of *MRAC*, the specified disclosure rules need not be extended to include situations for which the rules are silent. The *Act* states:

> 464(1) Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.

[7] Accordingly, the CARB exercised its power to allow the evidence into the record. In this case, the Complainant was aware of the surrebuttal document as it had been provided prior to the hearing, but did not request an opportunity for submission of sur-surrebuttal. Had such a request been made, procedural fairness would dictate that it would have to be considered.

[8] In making that determination, the CARB notes that the specific facts of every case must be considered. There may be cases where surrebuttal is not reasonable, and other cases where both surrebuttal and sur-surrebuttal is warranted. Each case may differ, and previous CARB decisions are not binding. While the Complainant presented cases in which documentary evidence in surrebuttal was denied, there are also CARB decisions that allowed such evidence in surrebuttal - one example is *IORVL et al vs. Regional Municipality of Wood Buffalo*, CARB

2015/001, where both surrebuttal and sur-surrebuttal were permitted. As long as procedural fairness is maintained and the complainant is provided sufficient time to review the document, the CARB determined that surrebuttal evidence may be entered.

PROPERTY DESCRIPTION AND BACKGROUND

[9] The subject property is a 47,703 square foot (SF) Safeway grocery store and 5,633 SF liquor store located on a 4.55 acre parcel within the Cochrane Town Square shopping centre in the Fifth Avenue Shopping District of the Town of Cochrane (Town). The grocery store portion is assessed on the income approach based on a lease rate of $14.25/SF for Grocery Store/ Average, resulting in potential gross income (PGI) of $679,768 from which vacancy allowance of 7% is deducted resulting in an effective gross income (EGI) of $632,184. Operating cost shortfall based on $5.50/SF operating costs and non recoverables at 2% are deducted, resulting in net operating income (NOI) of $361,237 which, capitalized at 7.00% results in a value of $8,588,200. The liquor store portion is assessed on the income approach based on a lease rate of $24.00/SF for Multi Tenant CRU/ Good resulting in potential gross income (PGI) of $135,192 from which vacancy allowance of 7% is deducted resulting in an effective gross income (EGI) of $125,729. Operating cost shortfall based on $7.00/SF operating costs and non recoverables at 2% are deducted, resulting in net operating income (NOI) of $120,454 which, capitalized at 7.00% results in a value of $1,720,800, which, added to the value of the grocery store portion, results in the assessment under complaint.

ISSUE

[10] The complaint form contained a number of issues, but at the hearing the issues argued and considered were:

1. Should the vacancy rate of the grocery store be increased to 15%?
2. If the vacancy rate is not adjusted, should the capitalization rate (cap rate) be increased to 8%?
3. Is the rental rate of the liquor store inequitable with similar properties in the area?

[11] Requested Assessment: $ $8,578,500

COMPLAINANT'S POSITION

Vacancy and Cap Rate

[12] The Complainant presented a Cochrane Anchor Vacancy Analysis showing six anchor tenants including the subject, two other grocery stores, Walmart and the current Canadian Tire store. The sixth anchor tenant in the analysis is the 57,315 SF space, also in Town Square, which was previously occupied by Canadian Tire and is now vacant. This vacant area represents 15.51% of the total anchor space in the Town; therefore, the vacancy rate should be adjusted to 15% instead of the 7% vacancy applied, which would result in an assessment of $7,002,200.

[13] The Complainant also presented a Capitalization Rate Analysis in support of the requested 8.00% cap rate. Two sales were included:

- the vacant former Canadian Tire at 320 5 Avenue W sold in May 2021 for $6,500,000 after marketing efforts to lease or sell starting in 2016 when Canadian Tire vacated to

move into new premises. Its assessment at time of sale was $7,283,600. The assessed income parameters were a rental rate of $10.50, 7.0% vacancy, $5.50/SF operating costs and 2% non recoverables resulting in NOI of $526,421. On this basis, the sale price reflects a cap rate of 8.10%. The Complainant noted that if the cap rate were to remain at 7% the sale price would be supported if a 15% anchor vacancy rate were applied.

- the former MacArthur Fine Furniture building at 141 Gateway Drive NE in the City of Airdrie sold in June 2021 for $3,700,000. It was a court-ordered sale and was listed for some time, initially in 2017 with higher listing price which was dropped and ultimately sold at a price significantly less than the assessment of $4,258,000. Based on the income parameters applied by the City of Airdrie at the time of sale, which consisted of a rental rate of $9.50, 8.0% vacancy, $4.00/SF operating costs and 3% non recoverables for an NOI of $293,534 the sale price reflects a cap rate of 8.34%.

[14] The Complainant argued that these sales show that either the cap rate should be increased to 8% or the vacancy rate should be increased to 15% to reflect market value. The requested assessment is based on an 8.0% cap rate with other parameters unchanged, but a 15% vacancy with the cap rate unchanged would also reflect market value.

[15] In rebuttal, the Complainant noted that the Respondent's vacancy analysis included the area of the former Canadian Tire in the total inventory, but did not include it in the total vacant space. The Complainant argued that space is vacant when there is no revenue being generated, and the space in the former Canadian Tire should have been listed as vacant. A short-term, temporary occupancy should cause the space to be considered occupied. The Complainant also noted roll numbers in the Respondent's vacancy analysis in 2019 and 2020 that did not exist, as well as smaller spaces that the Complainant knew to be vacant that were shown as not vacant. The Respondent's vacancy analysis indicated overall vacancy in 2019, 2020 and 2021 at 4.61%, 5.23% and 5.44% respectively; however, if the bad roll numbers are removed, the actual vacancies corrected and the former Canadian Tire correctly noted as vacant, the overall vacancy in 2019, 2020 and 2021 would be 13.04%, 14.31% and 13.22% respectively.

[16] With respect to the restrictive covenant and limiting potential tenants of the former Canadian Tire store, the Complainant stated that such provisions are common in leasing, whereby there are agreements that no other similar tenant can lease another CRU space within the shopping centre. In *CP REIT v. City of Medicine Hat*, CARB 0217-026/2015, the CARB found the restrictive covenant was not so stringent as to disallow redevelopment, and that while certain department stores were not allowed, numerous others were. Further, Peavey, True Value and ACE are related parties, as are Lowes and RONA. The restrictive covenant does not cause the sale not to be reflective of market value. The Complainant stated that the sale is a valid, arms length market sale close to the valuation date, and should be considered in determining the income parameters in the valuation of the subject.

Liquor Store Lease Rate

[17] The Complainant argued that $24/SF for the liquor store was inequitable with similar CRUs in the area. There is no reason why the liquor store should be rated as "good" when the grocery store is "average." A 9,564 SF space in the neighbouring Points West Centre used for a fitness centre is superior space, with exposure to Fifth Avenue, and is assessed as Average at a lease rate of $17.00/SF. The Complainant noted that this space was leased at $18.50/SF for a 10-year term commencing January 2014. A 5,400 SF space in Mountain Ridge Plaza leased for

$18.00/SF in July 2019. The subject liquor store is owner-occupied and there is no lease rate available; however, these leases show that it is inequitably assessed and the rate should be reduced to $17/SF.

[18] The requested assessment is based on a $17/SF lease rate for the liquor store and a cap rate of 8% on the overall NOI for the property.

RESPONDENT'S POSITION

Vacancy and Cap Rate

[19] The Respondent argued that the former Canadian Tire was an atypical sale, and was not actually vacant. The 2020 ARFI return indicated "Owner Occupied" and that there was a temporary occupant from July 2018 to April 2019. After the sale, it was demised and under construction – there were two development permit (DP) applications in March and June 2021 and seven building permit (BP) applications from June to October 2021. The Respondent only considers space to be vacant if it is available for lease; therefore, if a building permit application has been made, it is not considered vacant. After the sale in May 2021, the purchaser replied to the Sales Verification Questionnaire noting that the space was vacant at purchase and that an estimated $3,000,000 was intended for repairs and improvements. The Respondent conceded that the spaces for which the BP applications were made after the July valuation date should have been considered vacant, but did not agree that the Canadian Tire space in previous years should have been considered vacant as it might have been leased if not for the restrictions on potential tenants.

[20] The sale was subject to a restrictive covenant which stated that for a period of 30 years the purchaser will not permit the use of the property for the purposes listed, which included department stores and stores selling automotive parts and supplies, sporting goods, home improvement or hardware, plumbing or electrical supply, paint or wallpaper, garden centre supply, or any similar wares. The list of permitted uses included junior department store, dollar store, pet store and pharmacy; however, it was clear that Canadian Tire as the owner of the land was restricting potential users, which would impact the leasing and sale of the property.

[21] The Respondent argued that the sale of the MacArthur Fine Furniture building should not be considered, as it was a court-ordered sale following bankruptcy. The Respondent presented excerpts from *Standard on Verification and Adjustment of Sales* published by the International Association of Assessing Officers (IAAO) which states that a foreclosure is not a sale but the legal process by which a lien on a property is enforced. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from the books. This was not a market sale, and further, it was a sale in a different municipality which may not be an indicator of sales in the Town.

[22] The Respondent argued that for the reasons cited, the two sales presented by the Complainant are atypical and not representative of the market. The sale at 120 Fifth Avenue W in May 2020 for $22,500,000 is within the Town and a better representation of typical market activity. It consisted of the Shoppers Drug Mart and three CRU buildings including upper level office and a bank. It was on four condominium plans but comprised one shopping centre. The Sales Verification Questionnaire stated the actual purchase cap rate was 6.0%, but application of typical income parameters resulted in a 6.38% cap rate. This sale supports the 7.0% cap rate applied.

[23] In surrebuttal, the Respondent defended their vacancy study noting the bad roll numbers

were properties that had been subdivided and the new roll numbers were shown in the subsequent years. One of the demised spaces in the former Canadian Tire was Petsmart, for which the BP application was prior to July 1, 2021; therefore, the Respondent would not consider it to be vacant for 2021. The Respondent presented a study that showed that even if the former Canadian Tire was noted as vacant in previous years, the overall vacancy in 2019, 2020 and 2021 would be 9.59%, 10.13% and 8.53% respectively. The vacancy for 2021 would be 9.62% if Petsmart is noted as vacant.

Liquor Store Lease Rate

[24] The Respondent presented two leases for fitness space in addition to the two provided by the Complainant. They were upper level and main level Excellent quality space in undisclosed locations that commenced in October 2018 for $17.50 and $24.50/SF respectively. The average of the four leases, which ranged from 2,692 to 9,564 SF in Good to Excellent quality space, were $19.30/SF. In comparison, 12 liquor store leases, also in undisclosed locations, were presented that ranged from 1,000 to 3,644 SF in spaces from good to excellent quality for lease rates from $25 to $37/SF. The average lease rates were $25.50, $30.58 and $34.67 for Average, Good and Excellent respectively. The leases show that liquor store space is not comparable to fitness space – there are differences in characteristics such as security and cooler space that would make liquor stores lease at higher rates.

[25] The assessed rental rate for the other CRUs in the Town Square shopping centre are also at $24/SF and of Good quality. A $17/SF lease rate for the liquor store would be inequitable with the other spaces in the same shopping centre. The Respondent requested that the assessment be confirmed.

DECISION

[26] The assessment is confirmed at $10,309,000.

REASONS

Vacancy and Cap Rate

[27] The CARB considers the vacancy of the former Canadian Tire store to be atypical. The CARB agrees with the Respondent that typical vacancy should be based on spaces that are vacant and available for lease. Spaces that are under contract are not available for lease, and whether or not the space is generating income for the property owner at the valuation date, should not be included in the calculation of typical vacancy for mass appraisal using the income approach.

[28] In the case of the former Canadian Tire, the CARB is of the opinion that if the pool of potential lessees had not been restricted to those that would not be competition for Canadian Tire, it would likely have been leased in a more timely fashion. As the land owner, Canadian Tire chose to keep the property vacant awaiting a suitable user. Accordingly, the CARB finds that it would be appropriate to exclude the 57,315 SF of this space in both the total area of commercial space and the vacant area in the analysis. On this basis, the overall vacancy in 2021 would be in the order of 5.2%; therefore, the CARB determined that the 7.0% typical vacancy allowance should not be increased.

[29] For the same reason, the CARB is of the opinion that the former Canadian Tire may have sold for more had the land owner not restricted the tenants that could occupy the space. Accordingly, the CARB gave more weight to the cap rate of the sale at 120 Fifth Avenue W in the

Town. The CARB did not give weight to the sale in the City of Airdrie, as it was a court ordered sale in a different municipality. Based on the two sales in the Town, one at a cap rate of 6.38% and another given less weight at 8.10% the CARB determined that the 7.0% cap rate applied in the assessment should not be varied.

Liquor Store Lease Rate

[30] The CARB is of the opinion that liquor store space is not comparable to fitness space due to differences in characteristics, and an equity argument based on assessment of fitness space is not compelling. The leases presented by the Respondent to show that liquor stores generally leased for a higher rate than fitness space did not have location information to determine their comparability, and were much smaller spaces. Accordingly, the Respondent's lease information was given little weight; however, the Complainant presented only fitness space lease rates but no evidence of liquor store lease rates to demonstrate that the two spaces lease at similar rates.

[31] In view of the differences in the fitness and liquor store space, and also in view of the lease rate applied to other CRUs in the same shopping centre, there was insufficient evidence to vary the liquor store lease rate on equity alone.

Dated at the Town of Cochrane, in the Province of Alberta, this 5th day of October, 2022.

Karen Babin for

H. Kim, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE CARB:

NO.	ITEM
C1	Complainant Disclosure
C2	Complainant Rebuttal
C3	Complainant Submission re. Surrebuttal
C4	Complainant Cases Referenced in Closing Argument
R1	Respondent Disclosure
R2	Respondent Surrebuttal
R3	Respondent Surrebuttal (with corrected numbers)

An application for judicial review of this decision may be made in accordance with the Municipal Government Act as follows:

470 (1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(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) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.

TOWN OF COCHRANE

COMPOSITE ASSESSMENT REVIEW BOARD ORDER

IN THE MATTER OF COMPLAINTS filed with the Town of Cochrane Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act,* c. M-26 RSA 2000 (*Act*).

BETWEEN:

Canalta Real Estate Services Ltd.
as represented by Altus Group Limited

Complainant

AND:

Town of Cochrane

Respondent

BEFORE:

H. Kim, Presiding Officer
L. Gale, Member
P. Mellor, Member

Secretariat:
K. Babin, Clerk

This is the decision of the Town of Cochrane Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Town of Cochrane and entered in the 2022 assessment roll as follows:

Roll No: 645500
Address: 10 Westside Drive
Assessment: $4,118,200

This complaint was heard on the 8th day of September, 2022, at the Town of Cochrane Council Chamber at 101 Ranchehouse Road, Cochrane, Alberta.

Appeared on behalf of the Complainant: A. Izard, Altus Group

Appeared on behalf of the Respondent: R. Lodermeier, Town of Cochrane
G. Butz, Town of Cochrane

PROPERTY DESCRIPTION AND BACKGROUND

[1] The subject property is a four-storey, 70-room hotel with indoor pool on a 1.83 acre parcel in the Town of Cochrane (Town). It was constructed in 2000 and renovated in 2017, and is assessed as Good quality on the income approach based on three year stabilized gross income from which occupancy allowance, expense ratio and non recoverables are deducted, resulting in 33.5% net operating income (NOI) before deducting 15% for furniture, fixtures and equipment (FF&E) resulting in 28.5% NOI capitalized at 9.5% which results in the assessment under complaint, and equates to $58,831 per room.

ISSUES

[2] The complaint form contained a number of issues, but at the hearing the issues argued and considered were:

1. Is the assessment in excess of market value?
2. Is the income approach to value unreliable in view of the impact of COVID-19?
3. Should the fire and subsequent demolition of the building in February 2022 be considered in the assessment?

Requested Assessment: $3,542,000 based on $50,600 per room.

COMPLAINANT'S POSITION

[3] The Complainant presented seven sales in various smaller municipalities in Alberta, of which two sales were the most comparable:

- the Super 8 in the Town of High River (High River), a 60-room hotel which sold in March 2020 for $3,520,000 or $48,693 per room after deducting 17% for FF&E and non assessables.
- The Homestay Express in the City of Airdrie (Airdrie), a 49-room hotel which sold in September 2021 for $3,100,000 or $52,510 per room after deducting 17% for FF&E and non assessables.

[4] The two sales have an average and median of $50,602 per room and this is the basis for the requested assessment. The Super 8 sale was pre-COVID, and was assessed at the time of sale at $2,950,300 while the current assessment is $2,491,300. Similarly, the Homestay Express in Airdrie is currently assessed at $2,614,000.

[5] The Complainant argued that the impact of COVID-19 is such that the income approach is an unreliable indicator of market value. Other municipalities such as the City of Airdrie are assessing hotels at value per room. The Ramada hotel in Airdrie is a 59-room hotel assessed at $50,000 per room. Sales comparables provide a better indication of market value and they show that the assessment should be reduced.

[6] The subject building suffered a fire in February 2022 and was subsequently demolished. The Complainant agrees that this is post-facto information, but indicates that the significant challenges of the subject property.

[7] In summary, the comparable sales indicate the assessment is in excess of market value and should be reduced to $3,542,000.

RESPONDENT'S POSITION

[8] The Respondent compared the demographics of the Town with High River to show that the two markets are not similar. Further, Super 8 is considered an economy chain while the Ramada is a midscale chain. This sale is not a good indicator of the market value of the subject.

[9] The Homestay Express in Airdrie was a Super 8 before it was purchased in 2015 by a private corporation which subsequently went into receivership. The property was sold by the receiver to a non-profit to be used for affordable housing. No value was attributed to the furniture and fixtures; therefore, 17% FF&E should not be deducted, and the actual sale price was $63,265 per room. The sale of the 96-room Hampton Inn & Suites in Airdrie, which sold for $9,135,000 in June 2021 should have been included in the analysis. It is considered an upper midscale chain, and was also sold by a receiver for a non-hotel use to a foundation that intended to operate it as a seniors' facility; therefore, FF&E should not be deducted from the sale price, which equates to $78,976 per room. The two sales suggest the average market value is $71,120 per room.

[10] The Respondent highlighted several prior decisions that found sales in other municipalities were not compelling. More reliance should be placed on the sales within the Town. There were four sales between February 2014 and September 2017, at sale prices (adjusted for reported FF&E) of $77,049 to $85,294 per room. The FF&E reported ranged from 8% to 19%.

[11] The subject is in an area of the Town which has three hotels and a motel in close proximity. The three hotels, including the subject, are all assessed at $58,831 per room. It would be inequitable to reduce the assessment of the subject.

[12] The Respondent noted that regardless of the approach to value used in any valuation, the result must make sense and reflect the logic and value conclusion of participants in the market for the specific asset type. The non-profits in Airdrie purchased the hotels because the purchase and renovations would be about half of what it would cost to build. A cost approach comparison of value for the subject based on land at market value of $1,647,000 and cost of improvements using Marshall & Swift at $3,725,000 results in a total of $5,372,000 or $76,743 per room.

[13] With respect to the fire, section 349(1) of the Act specifies that taxes that have been imposed in respect of improvements are a first charge on any money payable under a fire insurance policy for loss or damage to those improvements. Further, the owners intend to rebuild the hotel.

[14] The Respondent argued that the sales presented were unreliable and not comparable, and that the sales within the Town and the cost comparison support the assessment.

DECISION

[15] The assessment is confirmed at $4,118,200.

REASONS

[16] The CARB agrees that due to the significant differences in demographics between High River and the Town, the sale of the Super 8 is not a good market indicator for values in the Town. Further, even it were considered to be in a comparable location, there was no support for

the 17% FF&E deduction, and the CARB notes that the reported FF&E on the sales within the Town ranged from 8% to 19%. Similarly, the CARB does not consider Airdrie to be comparable to the Town.

[17] Accordingly, there was insufficient market evidence to support a reduction in the assessment. The CARB notes that even if 17% FF&E were deducted from both of the Airdrie sales, the average and median would be $65,744 for the two Airdrie sales, and $60,061 and $52,510 respectively for the three sales including the High River sale.

[18] In summary, while the CARB did not find the market sales provided to be a compelling indicator of value for the subject, if they were to be relied on, the Hampton Inn sale should be included in the analysis and the average per room sale price would support the assessment.

[19] With respect to the fire and subsequent demolition of the subject property, the CARB notes the *Act* requires the subject assessment must reflect the characteristics and physical condition of the property on December 31, 2021 and accordingly no adjustment can be made.

Dated at the Town of Cochrane, in the Province of Alberta, this 5th day of October 2022.

Karen Babin for

H. Kim, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE CARB:

NO.	ITEM
C1	Complainant Disclosure
C2	Complainant Rebuttal
R1	Respondent Disclosure

An application for judicial review of this decision may be made in accordance with the Municipal Government Act as follows:

470 (1) Where a decision of an assessment review board is the subject of an application for judicial review, the application must be filed with the Court of King's Bench and served not more than 60 days after the date of the decision.

(2) Notice of an application for judicial review must be given to

(a) the assessment review board that made the decision,

(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) a municipality, if the decision that is the subject of the judicial review relates to property that is within the boundaries of that municipality, and

(e) the Minister.