

Appeal Numbers
17- 47- 0019 to 0244

OSOYOOS INDIAN BAND
BOARD OF REVIEW
DECISION

BETWEEN:

OSOYOOS INDIAN BAND

APPELLANT

AND

THE ASSESSOR – OSOYOOS INDIAN BAND

RESPONDENT

Heard: June 21, 2017 at OIB Council Chamber

Chair: John Collins AACI, P. App (Ret)

Member: Julian Greenwood, LLB

Member: Joseph Linkevic, LLB, LL.M. M.A.

For the Appellant: Gordon Frampton, AACI, P. App

For the Respondent: Tracy Wall, RI,
Don Currie, B.Sc., RI,
Todd Pinske, RI

Roll Numbers: 47-125-10036000 to 47-12510038940

Address: 1200 Rancher Creek Road, Osoyoos, BC

Grounds for Appeal: 2017 Assessed Values for the Subject Properties are too low.

The Issue: The value of the subject properties were reduced from their 2016 assessed values by an average of 20.7% with a maximum reduction of 29.55%

Property Description:

Spirit Ridge is a residential development that was built in 2008. It is within the larger NK'MIP Resort, all of which is located on land belonging to the Osoyoos Indian Band. The development is situated immediately adjacent to the Town of Osoyoos and it is approximately 3.5 km by road from Spirit Ridge to the downtown core of Osoyoos. The NK'MIP Resort features a number of amenities including:

- the NK'Mip winery and the NK'MIP cultural centre,
- 50 seat restaurant,
- 35 acre Sonora Dunes 9 hole executive par 3 golf course and clubhouse,
- spa and two outdoor pools (one with a water slide),
- fitness center and hot tubs,
- campground,
- private beachfront access and boat launch facilities.

The units at Spirit Ridge consist of apartments and townhouses. The townhouse units are located in 2 story buildings consisting of 6 units in each, 3 on the ground floor and 3 walk up units on the second floor. There are a total of 36 townhouse units, ranging in size from 772 to 1077 square feet.

The apartment units are in 3 and 4 story buildings with underground parking. There are 190 apartment units ranging in size from 575 to 1259 SF. Most of the units are on the smaller end of this range with 117 of the units which are between 575 and 628 square feet.

Background:

The 226 strata units under consideration were assessed for 2017 property tax purposes under the *Osoyoos Indian Band Assessment Law, 2009* (the OIB Assessment Law). The parties agree that this law requires the assessor to value all assessable properties on the reserve as if they were held in fee simple off the reserve and that for the purposes of the 2017 assessment roll the valuation date was July 1, 2016.

They also agreed that the town of Osoyoos is the “reference jurisdiction” from which to determine fee simple values for the subject properties.

Both parties reviewed sales evidence from a number of similar strata title residential resorts in the town of Osoyoos. These resorts were Walnut Beach Resort, Watermark Beach Resort, Casa del Lago and Sole Vita. They were all similar to the subject in age and quality and are held in fee simple title.

The Evidence:

For the Appellant

The Appellant’s witness, Mr. Gordon Frampton is an experienced appraiser who is well known in the appraisal and assessment community. He was accepted by both the Board and the Respondent as qualified to give expert testimony in the matter of the valuation of the subject property.

Mr. Frampton reviewed 19 sales from the various Osoyoos resorts mentioned above, adjusting each to a valuation date of July 1 2016 by applying a time adjustment of 1% per month to the sale prices. He developed unit rates (\$/square foot) for units, categorizing them by floor level (top floor or not), corner location or not, and the presence or absence of views.

He then selected reference units from the subject development that were comparable with the sale units he had analyzed, and applied to them the same unit rates he had arrived at from the sales. He then compared those values with the 2016 assessed values on the same units. This produced percentage changes in value (both positive and negative) between the 2016 assessments and his calculated values for each unit. He argued that typical or median ratios so found could be used to deduce 2017 assessed values from the 2016 values of the subject units.

Mr. Frampton found that for unimpaired view (VIEW) properties, the median of his ratios was 2%. He referred to increases in the 2017 roll for view properties at Watermark averaging 2% and for Casa del Lago averaging 5%, before stating his opinion that an equitable increase for Spirit Ridge view properties from 2016 to 2017 would be 3%.

He found that for impaired or **non-view properties** the median of his ratios was 7.5%. After making comparisons with off reserve values, he said it was his opinion that an equitable decrease for Spirit Ridge non-view properties from 2016 to 2017 would be -3%.

This, he claimed, was what had happened to values over the year July 2015 to July 2016, as shown by the sales evidence. Using a uniform 3% increase for view properties and a 3% decrease for non-view properties, he produced a

spreadsheet recommending new 2017 values for all the units in the subject resort.

For the Respondent

The respondent introduced his witness Mr. Todd Pinske, who gave the Board information on his credentials and experience. He was accepted by both the Board and the Appellant as qualified to give expert testimony in the matter of the valuation of the subject properties.

Mr. Pinske commenced his evidence by advising the Board that in preparing his brief for the hearing, he had determined that the 2017 roll reflected some irregularities and disparities (the Board's words). As a result, he advised the Board that the Assessor had "started from scratch" in order to ensure that the subject properties were valued correctly and equitably.

The Assessor presented the Board with 15 comparable sales drawn from the Osoyoos area resorts mentioned earlier. He analyzed those sales in order to establish overall square foot rates for 1 bedroom/one bath non-view units, two bedroom/2 bath non view units and larger non-view townhouse units as contained in the Villas.

He established rates for typical 593 sf, 1 bedroom units at \$273/sf, for typical 1024 sf 2 bedroom units at \$270/sf and for typical 977 sf townhouses at \$320/sf.

The Assessor then applied further adjustments for size, for view (+5%), for top floor (+5%) or corner locations (+3%), together with the base rates, to all the subject units. The size adjustments were obtained from a size adjustment table developed from market data for a variety of property types. The Respondent did not challenge these adjustments in the hearing, and they seem to the Board to be reasonable

The Assessor included a spreadsheet at the back of his brief which contains the original 2017 land and improvement values for the subject as well as the new recommended values developed from his more recent analysis.

He recommended that the existing roll values totalling some \$45.7 million should be increased 8.4% to about \$49.5 million.

Additional Submissions

There were a number of interest holders who appeared at the hearing both to observe and make statements including Daniel Bibby, Executive Director & General Manager for Spirit Ridge. In addition, there was a written submission from Mr. Steve Elmore who holds a $\frac{3}{4}$ interest in unit 225.

The OIB Assessment Law requires the Board to ensure that the subject properties are valued as if they are held in fee simple off reserve. None of the submissions from the interest holders dealt with any evidence from fee simple sales, off reserve. The Board is cognizant of the interest holder's concerns that their holdings may have lost value in recent times. The Board reminds the interest holders that such considerations are not in the power of the Board to consider.

Board's Analysis

The Board does not accept the Appellant's theory that accurate assessments can be obtained for any year simply by applying an inflation or deflation percentage to the assessments from the previous year. Even if the evidence for the year-over-year value changes had been convincing, the real problem with this approach is that the previous year's values have not themselves been examined. Any errors in this initial data are therefore carried through to the recommended values for the later year.

In the present case, the Assessor admitted frankly that he was not happy with his original values for the 2017 assessment roll, which was the reason that he submitted new higher values to the Board.

The Board notes that the original 2017 roll appears to have been created by applying a standard factor to the 2016 roll values because the relationship between unit values has not changed. A good example of that fact is found in the relationship of values between units 103 to 116 in the Desert Suites building. They are identical 593 sf units but their original 2017 values range from \$203/sf to \$269/sf, which is a 33% difference. That ratio is the same for the 2016 roll values for those units. Put simply, they were not equitably assessed for 2016 and the result was initially the same for 2017 due to the application of a common factor.

The Board was also unconvinced by the Appellant's use of the available sales evidence. It seemed to the Board that the evidence could be used to support an unacceptably wide range of year-over-year value changes, and that the Appellant's choice of "median" ratios from a few samples was not particularly reliable. One example from the Appellant's brief is his choice of unit 311 in Desert Suites, which has 593 sf which he valued at \$390/sf. This indicated a required value increase of 8% for 2017. Had he chosen either of units 315 or 317 instead, both also 593 sf, he would have developed evidence of a 3% DECREASE.

Additionally, the Board notes that in applying a reduction of 3% to 2016 non-view assessments, the Appellant actually valued six out of seven of his reference units at rates higher than his sales analysis suggested and in fact, three were in excess of 10% higher. This seems to suggest that his recommended values for non-view properties are generally too high. This observation is further bolstered by his initial finding of a median 7.5% decrease for non-view properties which he rejected in favor of a 3% decrease..

For these reasons, it was difficult for the Board to accept the Appellant's approach, and it has not done so.

In summary, the Appellant's reliance on the 2016 roll values as the basic data for the 2017 recommended values, together with some observed weaknesses in the way the sales data was used to develop value changes, produced results that were unreliable, and in some cases clearly too high. The Board has therefore given little weight to this evidence.

The Assessor's approach, by contrast, produced a high degree of uniformity between similar units throughout the project, and the unit rates used by the Assessor appear to be well supported by the available sales data. On balance the Board prefers the evidence of the Assessor to that of the Appellant, and adopts the Assessor's recommended values.

Decision:

The Board orders that the 2017 assessment roll for the Spirit Ridge development be amended to reflect the values recommended by the Assessor in his brief. A table of the assessment roll numbers and their respective recommended values is attached.

For the Board,



John Collins
Chair
Osoyoos First Nation
Assessment Review Board

Rendered at Grand Forks in the Province of British Columbia this 30th day of July 2017.

RIGHT OF APPEAL:

The OIB Assessment Law provides a right of appeal as follows:

51(1) An appeal lies from the Assessment Review Board to a court of competent jurisdiction on a question of law.

(2) An appeal under subsection (1) must be commenced within thirty (30) days of the delivery of the Assessment Review Board's decision under subsection 49(1).