

**ASSESSMENT REVIEW BOARD
DECISION WITH REASONS****CARB - 0203-0005/2013**

IN THE MATTER OF A COMPLAINT filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Mo-Tires Ltd - Complainant

- a n d -

City of Lethbridge - Respondent

BEFORE:

Members:

Paul Petry, Presiding Officer

Arlene Driscoll, Member

Wayne Stewart, Member

A hearing was held on Wednesday, July 17, 2013 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessment of the following property tax roll number:

Roll No./ Property Identifier	Assessed Value	Owner
4-1-280-0423-0001 423 28 Street N	\$139,900	Mo-Tires Ltd/Brian Roelofs
4-2-050-2830-0001 2830 5 Avenue N	\$580,000	Mo-Tires Ltd/Brian Roelofs

Appeared on behalf of the Complainant:

- Brian Roelofs - Owner

Appeared on behalf of the Respondent:

- Gord Petrunik, Assessor, City of Lethbridge
- Stan Dilworth, Assessment and Taxation Manager, City of Lethbridge

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is an L shaped 1.66 acre parcel of land bordering 5th Avenue N and 28 Street N. The City of Lethbridge has assessed this property under two different roll numbers as follows.

1. 2830 5 Avenue N: a rectangular shaped lot containing one building built in 1974 that is approximately 14,610 square feet (SF) in size. The building is situated on an assessable land area of approximately 43,519 SF, and



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2. 423 28 Street N: a 0.66 acre rectangular shaped vacant land property located and abutting the south boundary of the 2830 5 Avenue N property.

The subject property has been assessed based on the capitalized income approach as applied to the Building situated at 2830 5th Avenue N. The capitalized income approach as applied by the Assessor results in an assessment of \$719,9000. \$580,000 of this amount has been placed on the property portion identified as 2830 5 Avenue N (roll number 4-2-050-2830-0001) and the balance of \$139,900 has been placed on the property portion identified as 423 28th Street (roll number 4-1-280-0423-0001).

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

PART C: ISSUES

The CARB considered the complaint form together with the representations and materials presented by the parties. The matters or issues raised on the complaint form are as follows:

Issue 1: Should the subject property be assessed as one property to conform with the single title that covers both roll numbers under complaint?

Issue 2: What is the correct market value of the subject property combined or otherwise?

ISSUE 1: Splitting of Property Within One Title

Complainant's Position

The Complainant argued that the subject property is one L shaped parcel with one title and should not be assessed as though there is two independent properties. The Complainant indicated that given the building to land ratios required by the City of Lethbridge the portion of the property identified as 2830 5th Avenue N cannot stand alone. The size of the building requires the land associated with 423 – 28th Street N in order to comply with the City's own bylaws. Reference was made to another property owned by Mr. Roelofs at 301 13 Street N where there had been an error in title verses roll number and the City was able to make a quick correction in that case but refuse to correct the mistake respecting the subject. Splitting of this single titled parcel is unfair and is not legal.



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Respondent's Position

The Respondent provided the Land Title Certificate for this property, which refers to the previous subdivided lots and portions of lots that now make up the parcel under complaint. The Respondent takes the position that it has the right and in fact an obligation to assess this property as it has done. The Respondent referred to section 1(1) (v) of the Municipal Government Act (ACT), which It argued supports the splitting of this property in two portions along the lines of the previous lot by lot subdivision.

CARB Finding and Reasons

The CARB has considered this matter and the guidance provided in the Act and Regulations. Section 302 of the Act requires the Municipality to prepare an assessment for property other than linear property. The term property is defined in section 284 (1) (r) of the Act as follows:

"property" means

- (i) *a parcel of land,*
- (ii) *an improvement, or*
- (iii) *A parcel of land and an improvement to it;*

There is no doubt that the subject land in its entirety is a parcel of land with improvements to it but should it be split into two parcels of land? A parcel of land is also defined in section 1(1) (v) of the Act.

"parcel of land" means

- (i) *where there has been a subdivision, any lot or block shown on a plan of subdivision that has been registered in a land titles office;*
- (ii) *where a building affixed to the land that would without special mention be transferred by a transfer of land has been erected on 2 or more lots or blocks shown on a plan of subdivision that has been registered in a land titles office, all those lots or blocks;*
- (iii) *a quarter section of land according to the system of surveys under the Surveys Act or any other area of land described on a certificate of title;*

It would appear to the CARB that the current subdivision of the subject lands has combined what had been shown as portions of lots 1 and 2 along with lot 3 and that the current title conforms to that combined land. Although the Respondent argued that the portion identified as (roll number 4-1-280-0423-0001) or lot 3 in the previous plan of subdivision, could again be subdivided and sold as a separate parcel, this cannot happen without first gaining approval from the subdivision authority. Such approval is not automatic and given the City of Lethbridge bylaw concerning building/land ratios it is very possible that such a request would be denied. The CARB is not prepared to make the assumption that approval would only be a routine matter. At the present time it is the whole of these lands that is registered at land titles representing the current subdivision. The CARB concludes that in light of the above definition at (v)(i) the entire



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parcel of 1.66 acres should be assessed together as this is what is currently registered. In the final analysis, given the method used by the Respondent to develop the assessment for both roll numbers, the assessment outcome would not change even if the property had been treated as one parcel.

Decision: Issue 1

In view of the above considerations, the CARB finds that there is little reason or support in the Act for breaking the subject parcel into two separate roll numbers.

ISSUE 2: Market Value of the Subject Property

Complainant's Position

The Complainant argues that the subject property is owner occupied and therefore there is no lease. The Respondent has applied a lease rate of \$4.50 per sq. ft. to the subject while the much larger and higher quality building owned by Varsteel is assessed using only \$3.50 per sq. ft. If an equivalent lease rate of \$3.50 per sq. ft. had been applied to the subject property the assessed value would be \$451,111. The Varsteel building was also allowed depreciation and other factors that further reduced the lease rate to \$3.19 per sq. ft. When this rate is applied to the 14,610 sq. ft. of the subject building at an 8% rate of return the resulting value is \$582,584. The Complainant also provided information regarding assessments and lease rates used for 5 other buildings. These lease rates ranged from a low of \$3.50 per sq. ft. applied to the Varsteel building to a high of \$10 per sq. ft. applied to a building occupied by Cam Air. The Complainant drew the Board's attention to the Miracle Channel Building, which it suggested is unique and newer than the subject but is only assessed at \$5.00 per sq. ft.

Respondent's Position

The Respondent reviewed its income approach to value and clarified that the capitalized income derived from the building at 2830 5 Avenue produces an assessed value of \$719,688. This value was rounded to \$719,900 and then split to allocate a value to both roll numbers involved. The fact that the vacant land is required to meet the required land ratio is recognized, as there has been no additional assessed value added to the income driven value. The Respondent supplied a table showing data for 5 comparable properties. These comparables were of similar sized buildings but the land size varied considerably. Lease rates ranged from \$4.50 per sq. ft. for the subject to \$7.21 for a property at 250 24th Street N. The Respondent argued that the Varsteel building rate cannot be compared to the subject as this building is much larger with considerably more land. The Miracle Channel building is not comparable as it is a different type of building with only 12 ft. ceilings.

CARB Findings and Reasons

The CARB has carefully considered the comparable properties brought forward by both parties. The problem encountered by the CARB is the lack of apparent similarity of the comparable

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properties to the attributes of the subject. The onus is on the Complainant to show that the assessment is in error and to bring forward sufficient quantifiable evidence respecting similar properties to show that the subject's assessment is not at market value as of July 1, 2012. Such evidence was not available to the Board. The CARB observes that lease rates are above and below the rate assigned to the subject property but there is no analysis that shows what lease rates are for properties of a similar age, similar land size, similar location, similar building size and type. While the CARB has questions respecting similarity between the Respondent comparables, the onus is on the Complainant to bring forward evidence in support of its recommended value. The CARB concludes that there is no quantifiable and compelling evidence in support of an alternate value in this case.

Decision Issue 2

Based on the forgoing the CARB has decided to confirm the assessments based on the values attached to the two roll numbers that exist at present. Should the Respondent follow the CARB's finding that these roll numbers be combined then the assessment of \$719,900 should be applied to the single roll number for the entire parcel as identified on the certificate of title.

PART D: FINAL DISPOSITION OF COMPLAINT

The complaint is denied and the assessment is confirmed at a value of \$719,900 as follows.

Roll No./Property Identifier	Value as set by the CARB	Owner
4-1-280-0423-0001 423 28 Street N	\$139,900	Mo-Tires Ltd/Brian Roelofs
4-2-050-2830-0001 2830 5 Avenue N	\$580,000	Mo-Tires Ltd/Brian Roelofs

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 29th day of July, 2013



Paul Petry, Presiding Officer



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APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

NO. ITEM

1. C-1 Complainant's Disclosure
2. C-2 Complainant's Rebuttal
3. R-1 Respondent's Disclosure

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING CAPACITY

1. Brian Roelofs - Owner
2. Gord Petrunik, Assessor, City of Lethbridge
3. Stan Dilworth, Assessment and Taxation Manager, City of Lethbridge

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Subject	Type	Sub-type	Issue	Sub-issue
CARB	Industrial	Split Parcel	Income Approach	Single or Split parcel