

**ASSESSMENT REVIEW BOARD
DECISION WITH REASONS****CARB - 0203-0014/2012**

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:

MNP LLP - Complainant

- a n d -

City of Lethbridge - Respondent

BEFORE:

Members:

Paul Petry, Presiding Officer

Wayne Stewart, Member

Shelley Schmidt, Member

A hearing was held on Thursday, June 28, 2012 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property Identifier	Assessed Value	Owner
1-1-400-0501-0001 501 40 Street S	\$338,500	TLD Holdings
1-1-400-0525-0001 525 40 Street S	\$338,500	TLD Holdings

Appeared on behalf of the Complainant:

- Giovanni Worsley, MNP LLP

Appeared on behalf of the Respondent:

- Gord Petrunik, Assessor, City of Lethbridge

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject complaints concern two side by side vacant land parcels both having an assessed value of \$338,500 or \$8.00 per sq. ft arrived at through use of the direct sales comparison approach. Both parcels are 42,312 sq. ft., are zoned as highway commercial and are located in the WT Hill Commercial Park.



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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 in this complaint are as follows:

Issue 1: Does the sale of the subject properties on July 11, 2011 provide a reasonable reflection of the market value for the subject properties as of the valuation date, July 1, 2011?

Issue 2: What is best estimate of market value for the subject properties July 1, 2011?

Other matters and issues were raised in the complaints filed with the Assessment Review Board (ARB) on March 26, 2012. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on July 18, 2011 are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised by the Complainant.

ISSUE 1: Sale of the Subject Properties

Summary of the Positions of the Parties

The Complainant brought forward documentation to show that both of the subject properties sold transferred on July 11, 2011 for a total sum of \$549,291 or for the sum of \$274,645 for each parcel. The Complainant argued that this arms length sale being only 11 days post the valuation date of July 1, 2011 is the best estimate of each property's market value for the year in question. The Complainant referred the CARB to a Court of Queen's Bench of Alberta decision 697604 Alberta Ltd. Vs The City of Calgary and Municipal Government Board. This case over turned an MGB decision where the MGB had placed little weight on the sale of the subject property and the sale in that case was also post -facto by 18 days. The Complainant argued that the court has given direction that is very relevant in this case and urged the CARB to accept the sale of the subjects as the best evidence of market value. This value expressed as price per sq. ft. yields a value of \$6.49 per sq. ft.

The Respondent argued that the sale of the subject property was post-facto and therefore should not be used in determining the assessment for the subject properties as of the valuation date July 1, 2011. These sale were not used by the Assessor in the determination of the \$8.00 per sq. ft. market value applied to all but one vacant land parcels in this sub-division.



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Decision: Issue 1

The sales of the subject properties July 11, 2011 has been determine by the CARB to be reflective of market value for the subject properties.

Reasons

The Complainant referred the CARB to a Court of Queen;s Bench of Alberta decision 697604 Alberta Ltd. Vs The City of Calgary and Municipal Government Board. In this case the Municipal Government Board (MGB) did not accord significant weight to the sale of the subject property which had occurred just 18 days post the valuation date of July 1. The judgment at paragraph 24 states:

"In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness"

The CARB accepts the direction of the court in the case brought forward by the Complainant. The fact scenario is very close to the facts in the complaint before the Board and there was no compelling evidence brought forward by the Respondent which would dissuade the CARB from placing significant weight on the court's direction in this case.

ISSUE 2: Market Value of the Subject

Summary of the Position of the Parties

The Complainant brought forward a list of 12 sales including the sales of the subjects which produced a median value of \$6.49 per sq. ft.

The Complainant provide documentation respecting a second sale of one of the subject properties which occurred April 4, 2012 for the sum of \$317,340 or \$7.50 per sq. ft. This value some nine months later still is well below the assessed value at \$8.00 per sq. ft. The Complainant urged the Board to reduce the assessment for each of subject parcels to their July 11, 2011 sales value of \$274,500.

The Respondent challenged four of the Complainant's sales comparables indicating that one was a condominium property, two were post-facto sales and one was non-arms length. The Respondent also provided a list of sales which removed these four sales and recalculated the average value to be \$6.91 per sq. ft. The Assessor, however, argued that two of these sales were close to the size of the subject and sold for the assessed value of \$8.00 per sq. ft.

In addition the Respondent also brought forward it's own list of five sales all of which were included in the Complainant's list. The Respondent argued that these sale were better comparables to the subjects from a size perspective and produced an average value of \$7.90 per sq. ft., a value very close the the assessed value of \$8.00 per sq. ft. These sale produced an ASR of 1.01 and the Respondent argued that the assessment of the subject is fair and equitable and should not be altered by the CARB.

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The best estimate of market value for the subject property as of July 1, 2011 is represented by the sales of the subjects July 11, 2011.

Reasons

The CARB notes that the sales available for analysis present a large range in size with the smallest parcel of 21,636 selling at \$9.94 per sq. ft. and the largest parcel of 166,741 sq. ft. selling for \$5.00 per sq. ft. The Respondent deemed that using comparables closer in size to the subject should be done in it's defense of the assessment but did not take this factor into account when determining the value of \$8.00 per sq. ft. which it applied to all but one parcel in this sub-division. The Respondent's argument respecting comparison based on size is not logical at this point. It is the CARB's view that the sales do not provide a conclusive value as analyzed by either party and in any case they do not represent a better indicator of market value then the sale of the subjects July 11, 2011.

PART D: FINAL DISPOSITION OF COMPLAINT

The complaint is allowed and the assessments are set as follows.

Roll No./Property Identifier	Value as set by the CARB	Owner
1-1-400-0501-0001 501 40 Street S	\$274,500.00	TLD Holdings Inc.
1-1-400-0525-0001 525 40 Street S	\$274,500.00	TLD Holdings Inc.

It is so ordered.

Dated at the City of Lethbridge in the Province of Alberta, this 17th day of July, 2012.



Paul Petry, Presiding Officer



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APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

NO. ITEM

1. Exhibit C-1 – Complainant's Submission
2. Exhibit R-1 – Respondent's Submission

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;*
- (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*

**CARB - 0203-0014/2012 Roll # 1-1-400-0501-0001, 1-1-400-0525-0001
(For MGB Office Only)**

Subject	Type	Sub-type	Issue	Sub-issue
CARB	Commercial	Vacant Land	Sale of the Subjects	Comparables