

IN THE MATTER OF A COMPLAINT filed with the City of Medicine Hat 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:

494803 Alberta Ltd. - Complainant

- a n d -

City of Medicine Hat - Respondent

BEFORE:

Members:

M. Vercillo, Presiding Officer

D. Knutson, Member

A hearing was held on October 21, 2014 in the City of Medicine Hat, in the Province of Alberta to consider a complaint about the assessment of the following property tax roll number:

Roll Number	Property Address	Assessed Value
139114	167851 Industrial Avenue SE, Medicine Hat, AB	\$859,180

Appeared on behalf of the Complainant:

- W. Melhem, Agent, MNP LLP
- G. Pahl, Owner, 494803 Alberta Ltd.

Appeared on behalf of the Respondent:

- J. Allan, City Assessor, City of Medicine Hat
- B. Osadchy, Assessor, City of Medicine Hat

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject is a multipurpose office/warehouse property that contains one building and has a zoning designation of "Mixed Use District" (M2D). According to the information provided, the building has an assessable area of 21,150 square feet (sf), was constructed in 1982 but was renovated in 2012/2013 due to a January 2011 structural collapse. The building is situated on an assessable land area 205,597 sf.

The subject is assessed using the Income Approach (IA) to value, applying a net rental rate of \$1.82 per sf to 14,909 sf warehouse space that is given a quality rating of poor, \$6.76 per sf to 3,204 sf office space that is given a quality rating of fair and \$3.64 per sf to 3,037 sf warehouse space that is given a quality rating of fair. The building space is also assigned a vacancy rate of 8.00%, management fees of 3.00% and a 2.00% structural rate. The net income calculated is

then capitalized for assessment purposes using a capitalization rate (cap rate) of 6.50%. There is also a surplus land value (\$54,569) added to the capitalized income.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make this decision under Part 11 of the Act. No procedural or jurisdictional 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: The assessment amount is not reflective of the correct application of the assessment range of key factors and variables, which include location, parcel size, improvement size, land use and influences (flooding potential).

Issue 2: The assessment amount is not reflective of the correct application of the comparison or income approach to value. The municipality has failed to recognize the negative influences including but not limited to parcel topography, shape, servicing, size, location, roadway and flood conditions and access restrictions.

Issue 3: The assessment amount is neither fair nor equitable relative to similar properties in the same jurisdiction.

However, during the hearing, the following issues were addressed:

ISSUE 1: The assessment amount is not reflective of the correct application of the income approach to value because the municipality has failed to recognize the subject's parcel configuration and development restrictions.

The Complainant provided a document entitled "Complainant Disclosure" that was entered into the hearing as "Exhibit C1". The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- 1) Overhead pictures and maps of the subject property highlighting its odd triangular shape configuration. The Complainant argued that because of its odd configuration, the subject has limited development potential and utility. The Complainant also argued that the site sits on a former landfill that would cause higher than typical development costs. As a result the Complainant requested the excess land assessment be removed to compensate for the subject's limited development potential.

The Respondent provided a 166-page document entitled "2014 CARB" that was entered into the hearing as "Exhibit R1". The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject's building occupies the most westerly portion of the site with access located in the middle of the property affording the opportunity to develop the subject's easterly portion.

- 2) Maps and pictures showing that the former landfill was not located on the subject property but approximately 1.3 kilometres away and consequently has no impact on the subject's development potential. Therefore, the Respondent argued the Complainant's request to remove surplus land assessment is not warranted and would be unfair and inequitable to other properties similarly assessed.

CARB Findings:

In view of the above considerations, the CARB finds as follows with respect to this issue:

- 1) There was not enough evidence provided that would allow the CARB to determine the subject's triangular shape would severely limit its development potential. The subject's improvement sits on the most westerly portion of the site, which allows greater opportunity to develop its easterly portion.
- 2) The Respondent provided evidence that allows the CARB to determine that the former landfill was not located on the subject's site but over one kilometre away. Therefore, the CARB is not convinced that the former landfill would cause higher than typical development costs.

ISSUE 2: The assessment amount is not reflective of the correct application of the income approach to value because the municipality has failed to recognize that the subject's gas line and sewer servicing issues.

The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject's gas line was not properly backfilled and causes problems with diverting water away from the subject property. In support of this argument, the Complainant provided a February 20, 2014 report from GEM Testing Ltd., whose scope of work was to determine the subject's subsurface soil and groundwater conditions. The report outlined "that shortly after the 2013 flood, the City of Medicine Hat installed a high-pressure gas line paralleling the south property line, approximately 2.4 m from the south side of the existing building...." The report concluded "...the significant increase in soil moisture, resulting in a large decrease in the stability and bearing capacity of the sub-soil conditions...that the increase in moisture content is a direct result from the installation of the high pressure gas line...."
- 2) Argument that due to the subject property's topography the subject suffers from abnormal turbulence in the sewer lines causing significant smells in the building. It was the Complainant's opinion that this would limit the subject's ability to attain market rental and vacancy rates.
- 3) The Complainant sought a 5% (\$36,738) reduction factor to its capitalized income value to compensate for this issue.

The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the Complainant provided a post-facto geological report that contained conclusions that were not brought to the attention of the Respondent in 2013 and in any

event, the insuring company would deal with remediation of the issue. Therefore, the Respondent argued a further 5% reduction to the assessment is not warranted.

- 2) Argument that although the subject is located in a sewage collection point area. The City of Medicine Hat has extensive systems in place that substantially reduce or eliminate odours from sewage.

CARB Findings:

In view of the above considerations, the CARB finds as follows with respect to this issue:

- 1) The Complainant was able to support its gas line issue with a third party geological report. In spite of the Respondent's protest that the report was post-facto and therefore a matter that may be dealt with in next year's assessment, the CARB is convinced that the gas line settlement issue was a condition that affected the property in 2013. The issue may have not been brought to the attention of the Respondent during its assessment of the subject but it was certainly identified during the disclosure process of this complaint and should be reflected in the 2014 assessment.
- 2) The Complainant argued that the topography of the subject property caused sewer service smells which would limit its ability to achieve market rent, yet market rent was not identified as an issue during the hearing, nor in its IA calculation of requested value.

ISSUE 3: The assessment amount is not reflective of the correct application of the income approach to value because the municipality has failed to recognize that the subject's rail line negative influence.

The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject suffers from a CP Rail main line that causes noise issues (49 trains pass by the subject per day) and potential environmental issues (oil spills). The Complainant argued that the rail line is actually a detriment to attracting tenants. The Complainant applied a 5% (\$36,738) reduction factor to its capitalized income value to compensate for this issue.

The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- 1) Argument that according to a CP Rail representative, the Respondent was told that the trains count is actually closer to 35 trains per day at peak periods. The Respondent argued that the rail issue is unfounded and therefore a further 5% reduction to the assessment is not warranted.

CARB Findings:

In view of the above considerations, the CARB finds as follows with respect to this issue:

- 1) The Complainant has not substantiated its claim that the rail issue has or will cause an impact to the subject's value. It appears to be simply an unsupported assertion.

ISSUE 4: The assessment amount is not reflective of the correct application of the income approach to value because the municipality has failed to recognize the subject's potential for flooding.

The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject is located in a flood plain and has flooded in each of the last two years.
- 2) A "Notice To Property Owners" from the City of Medicine Hat, dated June 17, 2014. The notice outlined that the subject property would be one of forty properties in the city that because of terrain, access and proximity would be unprotected (construction of temporary berms) should significant flooding occur in 2014.
- 3) The Complainant applied a 10% (\$73,475) reduction factor to its capitalized income value to compensate for this issue.

The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject's assessment was reclassified to a lower classification from the prior assessment in order to compensate for the flood plane issue, in accordance with a prior CARB decision. Therefore, an additional adjustment to the assessment is not required.

CARB Findings:

In view of the above considerations, the CARB finds as follows with respect to this issue:

- 1) The CARB is satisfied that the reclassification of the subject from "Warehouse-Fair" to Warehouse-Poor" and "Warehouse-Average" to "Warehouse-Fair", satisfactorily accounts for the flood plane issue and therefore, an additional adjustment to the subject's assessment is not warranted.
- 2) The Notice To Property Owner document is dated June 2014 and is therefore deemed by the CARB to not affect the subject's condition in 2013 and 2014 assessment. However, this may become an issue affecting the subject's 2015 assessment value.

ISSUE 5: The assessment amount is not reflective of the correct application of the income approach to value because the municipality has failed to recognize that the subject suffers from high vacancy.

The Complainant along with Exhibit C1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the subject has experienced a significant amount vacancy. The subject property suffered a roof collapse in 2011 and has gone through significant renovation since

then, through 2013. As a result, the subject has experienced high vacancy in the last few years.

- 2) A copy of a 2013 Request for Information (RFI) document. The RFI document indicated the subject property was completely vacant at that time but revealed during questioning that some occupancy was attained in the latter half of 2013.
- 3) The Complainant offered a 16% vacancy rate to the Respondent's IA valuation to compensate for this issue.

The Respondent along with Exhibit R1 provided the following evidence and argument with respect to this issue:

- 1) Argument that the vacancy rate applied to the subject's IA valuation was based on surveys of the commercial market in Medicine Hat and therefore the vacancy rate applied reflects typical vacancy. The Complainant provided no market evidence in support of it issue and any adjustment to vacancy rates should be denied.

CARB Findings:

In view of the above considerations, the CARB finds as follows with respect to this issue:

- 1) The CARB is not satisfied that a vacancy rate adjustment is warranted in this case. The subject property has undergone significant renovation since the 2011 flood. During much of that time the subject was not available for occupancy and any claim that it has historically gone through high vacancy as a result of this redevelopment is disingenuous. Therefore, the CARB finds that there was little indication that the vacancy issue is chronic and indeed there was some post-facto 2014 evidence that would indicate the Complainant is actively adding tenants since completing renovations.

PART D: FINAL DISPOSITION OF COMPLAINT

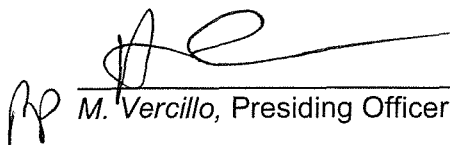
The complaint is accepted in part and the assessment is adjusted at \$819,000.

The CARB provides the following reasons for the decision:

- 1) With the exception of the gas line-servicing issue and to a limited extent the sewage odours, the Complainant was unable to provide compelling evidence that supported the other four issues it raised. It is also arguable that the Complainant failed to quantify the effects of the gas line and sewer servicing issues and their effects on the subject's fair market value. However, the CARB is satisfied that these servicing issues would indeed play a role in the subject's fair market value and would be reflective of its condition as of December 31, 2013. Therefore, the 5% adjustment request applied to the Respondent's IA valuation is a reasonable request and is hereby granted.

It is so ordered.

Dated at the City of Medicine Hat, in the Province of Alberta, this 6th day of November, 2014.



M. Vercillo, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

NO. ITEM

1. C1 Complainant's Disclosure
2. R1 Respondent's Disclosure

APPEAL

Decisions of the CARB are subject to appeal to the Alberta Court of Queen's Bench on questions of law or jurisdiction under Section 470 of the Act.

CARB - 0217-015/2014 Roll #139114**(For MGB Office Only)**

Subject	Type	Sub-type	Issue	Sub-issue
CARB	Warehouse	Multi-Tenant	Income Approach	Expenses