City of Medicine Hat
Composite Assessment Review Board
Decision With Reasons

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

344124 Alberta Inc.,COMPLAINANT

and

The City Of Medicine Hat, RESPONDENT

before:

P. Petry, PRESIDING OFFICER
W. Ziegler, BOARD MEMBER
R. Traichel, BOARD MEMBER

This is a complaint to the City of Medicine Hat Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Medicine Hat and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER	ADDRESS	ASSESSMENT AMOUNT
161481	**1788 Saamis Drive N.W.**	**$4,590,220.00**

This complaint was heard on the 30th day of August, 2012 at the City of Medicine Hat Council Chambers, 580 - 1st Street S.E..

Appeared on behalf of the Complainant:

- L. Lant

Appeared on behalf of the Respondent:

- J. Allan and K. Mardian

Property Description and Background

The subject property is 5.733 acres in size and is improved with a Ford Dealership originally constructed in 1978. The original building has 20,216 sq. ft. of space and a second building constructed in 2011 has 25,262 of ground level space and 4,297 sq. ft. on the second level

The assessment has been developed using the capitalized income approach to value as have other auto dealerships in the City of Medicine Hat (City). The Complainant challenges the assessment in this complaint primarily based on the subject's location and its underlying land value. The Complainant also believes the assessment of the subject is not equitable considering the assessments of other auto dealerships.

Preliminary Matters

At the outset of the hearing of this matter on August 30, 2012, the Respondent raised a preliminary issue concerning the timeliness of the Respondent's disclosure delivered to the Complainant on August 16, 2012 and the Complainant's rebuttal letter dated August 20, 2012 but received by the City on August 23. 2012.

The Respondent stated that based on the CARB's decisions respecting disclosure requirements respecting other complaints, both parties are late in disclosing their materials. The Respondent's disclosure was made on August 16th, 2012 but should have been made on August 15th, 2012 and the Complainant's rebuttal letter was received on August 23rd, 2012 but was due on August 22nd, 2012. The CARB therefore is requested to make a similar decision respecting this case and declare both the Complainant's rebuttal letter and the Respondent's disclosure as inadmissible for purposes of this hearing.

The Complainant indicated that his letter is dated August 20th, 2012 and would assume that it was delivered that same day, however, he could not be absolutely certain and had no proof that his assumption is correct. Mr. Mardian stated that the delivery person came to the Assessment Department with the letter on August 23rd and because it was to be filed with the ARB Clerk he walked up to the second floor with the delivery person where the document was submitted and stamped.

MRAC 8 (2) (b) and (c) provide the following:

"(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."

Section 22 (3) of the Interpretation Act sets out that the number of days must be "clear" days as follows:

"(3) If an enactment contains a reference to a number of days expressed to be clear days or to "at least" or "not less than" a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded."

The CARB recessed to consider the disclosure matter with reference to section 8 (2) (b) and (c) of MRAC and section 22 (3) of the Interpretation Act. The CARB concluded that the City's disclosure delivered to the Complainant on August 16, 2012 had not provided 14 "clear" days prior to the hearing date of August 30, 2012. Section 22 (3) of the Interpretation Act provides that the counting of days in this circumstance must not include the day of disclosure or the day of the hearing. There must be 14 "clear" days between these two events.

The CARB also considered the rebuttal letter of the Complainant which had been delivered to the City on August 23rd, 2012 and concluded that it too did not meet the 7 "clear" days required under section 8 (2) (c) of MRAC and section 22 (3) of the Interpretations Act. The same reasoning applies here. While the letter is dated August 20th, 2012, based on the testimony of Mr. Mardian and the date stamp on the letter the CARB is convinced that the letter was actually received by the City on August 23rd, 2012.

MRAC section (9) (2) sets out the following consequence where disclosures do not comply with section 8:

"(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."

The CARB therefore decided in accordance with section 9 (2) of MRAC that it could not allow the Respondent's disclosure of August 16, 2012 nor the Complainant's rebuttal letter of August 20th, 2012 into evidence The hearing then proceeded on the basis of the Complainant's June 12th, 2012 disclosure materials.

POSITIONS OF THE PARTIES

Complainant

The Complainant explained that the previous owner of his dealership constructed the original building in 1978. At that time the City of Medicine Hat (City) was encouraging automotive dealerships to consider locating to this area. In addition to the subject Ford Dealership, a

Pontiac Buick Dealership located to this area at about the same time. The Pontiac Buick dealership has since relocated to the south-east area where the economics are far better for a automotive dealership. The Complainant explained that the City has done nothing to develop the area surrounding the subject since 1978. Roadways are poor and dangerous and there is nothing to attract customers to the subject. Therefore the Complainant claimed he spends triple the amount other dealerships have to spend on marketing just to get customers out to his site.

Because of updating requirements by Ford Canada, the 1978 building had to be upgraded or a new building had to be built by 2012. Ford Canada service agreement also requires a six mile distance between dealerships and this prohibited relocating to the south-east where the majority of dealerships are now located as Big M Ford is already in that general location. In 2010 the Complainant had listed the subject property for the sum of $1,000,000 for one year but after receiving an offer to purchase at only $700,000 decided to stay at that location.

In support of the argument that land values are much lower in the area of the subject, the Complainant indicated that the old Pontiac Buick 6 acre site with a 27,000 sq ft. building just south of the subject recently sold for the sum of $750,000. Another 15 acre property in the area that is sill vacant could have been purchased for $90,000 an acre approximately two years ago. According to a real estate agent land in the south-east where the other dealerships are located goes for approximately $600,000 per acre. The Complainant also explained that he has purchased a .75 acre parcel of land for improved access to the new building at a cost of $147,000. He suggested that had he not required the access he would not have paid the $147,000 for this land. This is the only sale of land in the immediate area other than that to a developer in the last 28 years.

Given the options available the Complainant decided to build a new building on the original site. In the Complainant's view, while the building was sized to accommodate growth over the next fifteen years or so, its current value is much less than the $2,700,000 cost of construction.

The subject area has no bus service, no sidewalks, poor roads, poor access and no development and cannot be compared to the dealerships in the south-east. The Complainant provided four tax record reports for these south-east properties and spent some time reviewing the report for Big M Ford which he suggested occupied the best location in the area. This information indicated that Big M Ford is located on a corner lot consisting of 2.04 acres with a building of 17,844 sq. ft.. This property was assessed at $2,884,260 for 2011. Through questions of the Assessor it was determined that the tax record report submitted by the Complainant does not include the assessment of a separate lot of 1.68 acres. The Total assessment for Big M Ford therefore is $3,400,000. The Complainant argued that this dealership is located in a prime location, has a smaller building and less land and is still able to out perform his dealership. This should confirm for the Board the fact that the subject location is not comparable to these other dealerships and is assessed for far more than it could be sold for in the current market. The Complainant acknowledged that his request contained on the complaint form was that the assessment be reduced to $3.4 million but could not explain how this value had been established.

Respondent

The Respondent indicated that all dealerships had been assessed using the same method and the subject's rental rate had been reduced to reflect the difference in land values when compared to the value of land in the south-east. The Complainant's suggested value is overstated as a parcel recently sold in that area for approximately $550,000 per acre. The land

value for the subject is admittedly less than for the other dealerships, however, development is occurring in the N.W. Costco has recently built to the west of the subject for example.

The Respondent argued that a comparison of the subject to Big M ford is difficult because the land is smaller, the building is less than ½ the size of the subject and the location is different. The assessments take all these factors into account including the land to building ratio. Big M Ford is assessed at approximately $200 per sq. ft. of building while the subject is only assessed at approximately $100 per sq. ft. of building.

The Respondent stated that the assessment includes the full value of the new building and therefore naturally there would be a considerable increase in the assessment this year. If one were to use the Complainant's asking price of $1,000,000, add to that the $2.7 million cost of the new building plus the added .75 acre of land at $147,000 the resulting value is $3,847,000. The current assessment is very close to simply adding the additional land and the new building values to the previous assessment of $1,074,210. The Respondent requested that the assessment be confirmed.

DECISION WITH REASONS

The CARB considered the Complainant's argument that the location of the subject property places it at a great disadvantage compared to many of the other similar dealerships. The recent development of the Costco Store may bode well as other development occurs in this quadrant of the City in the future but at the time of the current assessment the CARB does believe that the location of the subject has impact on its market value.

The problem of course is to determine the value attached to that locational impact without more concrete evidence such as sales of land or other comparable developed property in the area, or a professional market appraisal.

The Complainant argued that a valuation based on rental income would not be reliable as there are few rental rates in the area and the subject is a large special purpose building which would not lease for rates paid for warehousing as an example. No rental information, however, was available for the Board to review.

The CARB did, however, consider what a built-up value would be starting with the previous assessment of $1,074,210. Add to that value the cost of the new building of $2,700,000 and the cost of the addition .75 acres of land at $147,000. The total value of these sub-values is $3,921,210. The starting value of $1,074,210 is very close to the asking price of $1,000,000 for the property before the new building was constructed. The costs of the new building and the additional land were facts not in specific dispute. While the Complainant argued that both the additional land and the cost of the new building were values that could not be recaptured in the market, the CARB had no direct evidence to confirm that argument.

The built-up value from each separate component as shown above is the most compelling evidence before the CARB and therefore the total value of these components is considered to be correct, fair and equitable given the evidence under consideration in this case.

In light of the reasons provided above the CARB has decided to reduce the assessment for the subject property to $3,921,210.00.

It is so ordered.

DATED AT THE CITY OF LETHBRIDGE THIS 8th DAY OF SETEMBER, 2012.

Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure

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*

(α) *the assessment review board, and*

(β) *any other persons as the judge directs*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
	Commercial	Car Dealership	Locational Issue	Land Value Disclosure