

November 2018 Feature Article

A Forensic Appraiser's Perspective:

Government Overpaid for Land Relying on Unauthorized Appraisal

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Appraisals are prepared for a host of reasons, but, in every instance, an appraisal is intended to support a decision-making process that involves the appraised property. A party commissioning an appraisal will either rely on the appraisal or attempt to induce another party (e.g., an expropriating or condemning authority, investor, etc.) to rely on the appraisal. Even parties that are frequent users of appraisals often lack the necessary skills to understand when and under what conditions they can or should rely on an appraisal report. A decision made on the basis of an appraisal report, to which there is no lawful entitlement, can lead to financial losses and unintended consequences, as occurred when the Saskatchewan government negotiated a deal to purchase additional land for the Global Transportation Hub (GTH) through the Global Transportation Hub Authority (GTH Authority). A sequence of events (and questionable conduct), commencing in November 2011, culminated in the December 2013 decision of the GTH Authority to acquire 204 acres at a grossly inflated price,¹ while relying on an unauthorized appraisal report “using a cash flow-subdivision development analysis” to value raw land in agricultural use.

An appraisal report prepared by a member of the Appraisal Institute of Canada or the Appraisal Institute (US) must contain a ‘Mandatory Certification,’ including a statement to the following effect:

My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *CUSPAP*² [or *USPAP*].

Such a self-serving declaration is an assertion without proof of compliance with the *Canadian Uniform Standards of Appraisal Practice (CUSPAP)* or the *Uniform Standards of Professional Appraisal Practice (USPAP)*, and is not indicative of a credible appraisal. No appraisal should be accepted at face value by any public agency without being properly reviewed. A public agency that does not have qualified appraisers on staff should retain the services of a competent review appraiser. Of course, a review appraiser has an obligation to conduct the

¹ Saskatchewan Legislative Assembly, *GTH East Land Transactions*, [http://docs.legassembly.sk.ca/legdocs/Legislative%20Committees/PAC/Tabledocs/PAC%2024-28%20GTH%20-%20Responses%20to%20questions%20\(12\).pdf](http://docs.legassembly.sk.ca/legdocs/Legislative%20Committees/PAC/Tabledocs/PAC%2024-28%20GTH%20-%20Responses%20to%20questions%20(12).pdf) (26 October 2018).

² CUSPAP are the Canadian Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Institute of Canada (AIC). The AIC does not obligate its members with a duty to report contraventions of CUSPAP.

review in an independent and objective manner, with a focus on the appraisal and not the appraiser. An appraisal report must be read from cover to cover, and all appendices examined. While every aspect of an appraisal is important, some aspects deserve special attention:

- Terms of Reference (Are they consistent with the concept of market value?)
- Appraiser Competencies (Are they adequate in terms of geographic and market knowledge, and property type and use?)
- Intended User (Who is authorized to rely on the appraisal report?³)
- Intended Use (Is the appraisal for securing financing, negotiating a sale/acquisition, expropriation/condemnation, offering memorandum, etc.?)
- Property Rights (For example, fee simple, leased fee or leasehold interest, whichever is appropriate.)
- Scope of Work (Type and extent of research, as well as level of documentation and verification must be adequate and consistent with the Intended Use.)
- Assignment Conditions (Beware of assumptions and hypothetical conditions on which value estimates are premised,⁴ and that circumvent market value.⁵)
- Client Supplied Data (Check for independent verification by appraiser.)
- Highest and Best Use (If different from existing use, beware of unrealistic assumptions and hypothetical conditions.)
- Approaches to Value (Reject any approach that is inappropriate for the type of property appraised; e.g., cost approach on income-producing property, subdivision development method on raw land, etc.)
- Compliance with CUSPAP⁶ (Check for completeness, accuracy, adequacy, relevance and reasonableness of the appraisal in the context of the Intended Use.)

³ An appraiser cannot shirk his/her responsibility to unnamed third-parties (not identified as intended users) to whom it might be shown and who might be expected to rely on the appraisal report in the context of the intended use (or foreseeable use). In *Abt Estate (Re) v Cold Lake Industrial Park GP Ltd*, 2018 ABQB 313 (CanLII), <https://www.canlii.org/en/ab/abqb/doc/2018/2018abqb313/2018abqb313.html?autocompleteSt=r=Abt%20&autocompletePos=3>, the appraiser was found liable in negligence to an unsophisticated third-party investor, with the court finding that “the Appraisal Report and Update Appraisal...was a gross overvaluation,” and calling the appraisal “nothing more than...a total sham.”

⁴ An “extraordinary assumption” or “hypothetical condition” must be clear and conspicuous in the appraisal report, and accompanied by a statement their use might have affected the assignment results (i.e., the value estimate).

⁵ An appraisal must include a sourced definition of market value, which is always expressed in cash or in terms equivalent to cash. Comparable sales relied on to estimate market value must be reduced to a cash-equivalent price if a transaction includes atypical financing, e.g., VTB mortgage on favourable terms and conditions.

⁶ A copy of the 2018 edition of CUSPAP can be downloaded from <https://www.aicanada.ca/wp-content/uploads/CUSPAP-2018-effective-01-aug-18-2.pdf>.

- Statutory Compliance (Does the appraisal comply with regulatory statutes, e.g., expropriation act, securities act⁷?)
- Abstract of Title/Parcel Register (Ensure the title abstract is current, and, if it is not included in the appraisal report, request or order one. Beware of easements, deed restrictions, cautions, other encumbrances and property ‘flips.’)
- Exculpatory Clauses (An appraisal denying liability to the intended user(s) should be rejected, and the appraiser instructed to remove the offending clauses.)
- Unsigned Appraisal Report (This is not valid and should be rejected.)

According to the Appraisal Institute of Canada, in describing *What Real Estate Appraisers Do*, the public can expect its members to provide “unbiased and dependable valuations” that “attest to the real value of property,” and rely on them to make “informed decisions about real estate.”⁸ [underscoring added] A flawed or unreliable appraisal undermines public confidence in the credibility of the appraisal profession, and a governmental agency exposed to such a report should reject the appraisal outright. If the appraisal has been completed by someone with an appraisal designation, a complaint should be lodged with the organization to which the appraiser belongs.

Governmental agencies without adequate appraisal policies and oversight are especially vulnerable to appraisals that lack credibility. If a flawed or unreliable appraisal has been acted upon, causing financial harm, it is advisable to simultaneously retain a competent review appraiser (preferably under the direction of legal counsel) and seek legal advice in a timely manner⁹ as to whether it is appropriate to claim damages for negligence. The elements necessary to succeed in a claim of negligence, as set out in *Queen v. Cognos Inc.*,¹⁰ are:

- 1) There must be a duty of care based on a ‘special relationship’ between the representor and the representee;
- 2) The representation in question must be untrue, inaccurate, or misleading;
- 3) The representor must have acted negligently in making said misrepresentation;
- 4) The representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
- 5) The reliance must have been detrimental to the representee in the sense that damage resulted.

All five of these elements must be proved by the claimant. It is not uncommon for reasonable appraisers to disagree on value. Appraisers can also commit an error in judgement, which

⁷ Never invest in a syndicated mortgage or property without access to a supporting appraisal report on which there is entitlement to reliance (i.e., foreseen intended user based on intended use of appraisal), and before the report has been reviewed, personally or by a competent appraiser.

⁸ AIC website cited in *Saskatchewan Power Corporation (Re)*, 2018 CanLII 5138 (SK IPC) <https://www.canlii.org/en/sk/skipc/doc/2018/2018canlii5138/2018canlii5138.pdf>

⁹ A claim of negligence must be filed within the prescribed jurisdictional limitation period, which generally starts from the day the cause of action is discovered.

¹⁰ *Queen v. Cognos Inc.*, 1993 CanLII 146 (SCC), [1993] 1 S.C.R. 87, at p. 110.

does not rise to the level of negligence.¹¹ If there is no reasonable or logical basis for an opinion of value in the context of the intended use, or an appraisal report is fraught with errors of commission or omission related to completeness, accuracy, adequacy and relevance, as supported by a comprehensive review of the appraisal report, a claimant will likely prevail on a claim of negligence.¹² A review appraiser acting as an expert witness has an overriding duty to assist the court, without advocating for the client's position.¹³ A document such as *CUSPAP* is likely to bear on a court's legal analysis.¹⁴

An unintended (unauthorized) user had a negligence claim against an appraiser dismissed,¹⁵ but the judge declared that, if the issue of negligence had to be addressed, he would have found "the appraiser was negligent," citing *CUSPAP* as the basis of the legal analysis. Despite the explicit statement in the appraisal that the "analysis, opinions and conclusions were developed in conformity with *CUSPAP*," the appraiser had an obligation to include in his report:

The impact on value of the floodplain bylaw, which the appraiser neglected to do [and] in the result overstated the market value of the property by...\$622,000. [paras. 45 and 46]

The intended use of the appraisal was to assist a lender in deciding whether the property offered sufficient collateral for a mortgage loan. The appraiser knew the land in question was in a floodplain, and the report made no mention of that fact. Highest and best use is a fundamental requirement of every appraisal, of which land use controls are a key consideration, and on which rests every estimate of market value. The land consists of 11

¹¹ *Leahy Family Trust v. Clive*, 2012 S.K.Q.B. 344, (CanLII), at para. 30.

¹² In *Abt Estate (Re) v. Cold Lake Industrial Park GP Ltd.*, 2018 A.B.Q.B. 313, (CanLII), the court found that "the Appraisal Report and Update Appraisal...was a gross over valuation" (para. 263) and "that the Appraisal Report [\$10,115,000 September 16, 2008] and Update Appraisal [\$8,595,000 March 30, 2009]...so flawed that it does not meet the standard of a reasonably competent appraiser. It was nothing more than a valuation prepared for a long-term client and a total sham" (para. 265, emphasis added). The 144-acre parcel, purchased by *Integra* on May 27, 2008 for \$600,000, was flipped by way of an offer accepted June 18, 2008 to *CLEI* for \$1,365,037.72, with a VTB mortgage of \$1,050,000 at 0% with no payment due until April 2009.

¹³ *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2018 B.C.S.C. 66 (CanLII), at para. 374. In *514788 Alberta Ltd. v. Bourgeois & Company Ltd.*, 2017 A.B.Q.B. 363 (CanLII), the court looked to guidance from both *CUSPAP* and the American USPAP (Uniform Standards of Professional Appraisal Practice) in its analysis of negligence in the preparation of an appraisal involving potential subdivision development.

¹⁴ See *Royal Bank of Canada v. Westech Appraisal Services Ltd.*, 2018 B.C.S.C. 473 (CanLII). In *Ascent One Properties Ltd. v. Liao*, 2017 B.C.S.C. 1017 (CanLII), an appraiser reviewing a report was harshly criticized by the court, as his "testimony was replete with editorialized pontification" and "his approach to his role as an expert witness was not only inappropriate and unhelpful, it was misguided. He confused the request that he provide a critique with the notion that he was charged with the responsibility of making findings of fact, determining subjective intent, and delivering conclusions regarding whether...[the appraiser] met the standard of care expected of him" (emphasis added). In *Abt Estate (Re) Cold Lake Industrial Park GP Ltd.*, 2018 A.B.Q.B. 313 (CanLII), the court questioned a review appraiser's "impartiality, and his commitment to the duty an expert has to the Court" (para. 118, emphasis added).

¹⁵ *Ryan Mortgage Income Fund Inc. v. Alpine Credits Limited*, 2016 B.C.S.C. 1582 (CanLII). Ryan Mortgage purchased a mortgage from Alpine Credits, a mortgage broker. The appraisal was addressed to the borrowers, with Alpine Credits identified as an intended user in a Letter of Transmittal. A Letter of Transmittal was never issued by the appraiser to Ryan Mortgage, the purchaser of the loan.

lots that cannot be developed for the stated highest and best as “being development to commercial-type use,” due to the onerous building restrictions contained in the floodplain by-law.

A public agency acquiring land on behalf of taxpayers and at public expense has a duty to conduct its affairs in a prudent and transparent manner, and to only pay market value based on a credible appraisal. In a highly controversial deal involving the Government of Saskatchewan’s purchase of land in connection with the development of the Global Transportation Hub (GTH), **\$103,000 per acre** was paid for 204 acres in December 2013. The government rationalized the purchase on the basis of an unauthorized February 2013 appraisal submitted by the vendor that “indicated the land was worth \$125,000 [per acre].”

Previously in **June, 2012**, appraisals commissioned by the Ministry of Government Services (appraisal contract redirected to GTH Authority) estimated the value of these same 204 acres at \$3.46 million, based on **\$20,000 per acre** (116.86 acres) and **\$15,000 per acre** (87.40 acres). An appraisal was also commissioned of a 41.15-acre parcel, which was appraised at **\$15,000 per acre**, and, subsequently, in **November 2012** the GTH Authority reached an agreement with the landowner to acquire the property at **\$30,000 per acre**. Particulars of this transaction are summarized as follows:

- **(NE-18-17-20-W2)** pertains to a 41.15-acre parcel acquired January 18, 2013 for \$1,234,500, equivalent to \$30,000 per acre. Reportedly, the property had been available for sale since March 2009, at an asking price of \$38,882 per acre.

Considering that this property had been available for sale on the open market for over three and a half years and, based on the June 2012 appraisal at \$15,000 per acre, it is reasonable to conclude the price of \$30,000 per acre negotiated by the GTH Authority in November 2012, roughly twice the market value of the property, was heavily influenced by the highway and GTH public projects, (i.e., the ‘scheme’). The property is zoned ‘UH – Urban Holding.’

The GTH Authority’s 204-acre acquisition in December 2013 at \$103,000 per acre is three times the \$30,000 to \$35,000 per acre estimated in an October 2013 appraisal¹⁶ prepared on behalf of the Government of Saskatchewan (Ministry of Highways),¹⁷ with the “intended use of the appraisal...to assist in the purchase of the land for a proposed roadway.” [emphasis added] The appraisal of the 204 acres prepared for the Ministry of Highways reflects values of \$30,000 per acre (87.40 acres) and \$35,000 per acre (116.86 acres), and the value estimates are supported by comparable sales, applying the Direct Comparison Approach. As indicated, the value estimates are based on the following assumptions:

¹⁶ A ‘draft’ Appraisal Report was submitted on June 13, 2012, which appears to address only the 116.86-acre parcel.

¹⁷ Peter M. Lawrek, *Appraisal Report*, <https://www.documentcloud.org/documents/2698563-C14-0044-Signed-Redacted-Jan8-16.html> (17 October 2018).

- 1) That access would be allowed from Dewdney Avenue, in order to develop the land for an industrial subdivision.
- 2) That Saskatchewan Highways would only require a minimal amount of the subject land for the intersection at Dewdney Avenue and the proposed West Regina Bypass. If too much land is taken, a subdivision development might be unfeasible.
- 3) That City of Regina water and sewer connections could be obtained at feasible costs.
- 4) That the underground pipelines on the subject land do not make an industrial subdivision unfeasible.

Reportedly, underground petroleum pipelines account for 11.78 acres of the 116.86-acre parcel and 1.78 acres of the 87.40-acre parcel. The 13.56 acres in which the pipelines are embedded are not developable and are a constraint to any future urban development of the 204 acres. At best, only 190.70 acres are developable. Both parcels are zoned UH (Urban Holding),¹⁸ and, according to the appraisal, “an industrial subdivision” is the highest and best use of the lands “based on the assumptions” previously listed. Reportedly, it is not feasible to extend sewer and water to the 116.86-acre parcel from the City of Regina, and access to sewer and water systems of the GTH Authority, the owner of the abutting property, would have to be negotiated.

These 204 acres were under the threat of expropriation, but the appraisal report makes no reference to the Saskatchewan *Expropriation Procedure Act*: legislation that protects the expropriating authority from paying for any increase in the value of the land occasioned by the public works (i.e., the ‘scheme’), and unrelated to the general movement of prices in the relevant real estate market. It can be a difficult task for an appraiser to discern price increases experienced by land sales that have occurred as a consequence of an announced major public project or the imminence of a public project.

Compensation by expropriating authority

49(1) An expropriating authority shall make due compensation to the owner of land expropriated by the expropriating authority in the exercise of its statutory powers beyond any special advantage that the owner may derive from any public improvement for which the land was expropriated.

(1.1) Subject to subsection (1), in an action for compensation the judge, in determining the value of the land expropriated, shall not take into account:

(a) any anticipated or actual use by the expropriating authority of the land expropriated at any time after expropriation; or

(b) any increase or decrease in the value of the land expropriated resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated.

(2) Compensation for land expropriated shall be ascertained as of the day on which the expropriating authority takes possession of the land or dedicates the land or the day on which

¹⁸ Lands ‘UH’ (Urban Holding Zone) “is designed to protect lands required for future urban development from premature subdivision and development.” (Zoning By-law No. 9250, City of Regina).

the declaration of expropriation respecting the land is submitted to the Land Titles Registry pursuant to section 10 or 12, whichever is the earliest. [emphasis added]

Global Transportation Hub

Funding Program	:	Gateways and Border Crossings Fund
Announcement	:	December 2007
Applicant	:	Province of Saskatchewan
Estimated Total Project Cost	:	\$103,183,000
Federal Contribution	:	\$27,000,000
Anticipated Project Completion	:	Fall 2014

The Global Transportation Hub (GTH) includes Canadian Pacific Railway's (CPR) new expanded intermodal facility, Loblaw Companies' new western Canadian distribution centre, and the associated transportation infrastructure. The transportation infrastructure will be developed in several stages.

Stage 1 involves the upgrading of existing Pinkie Road and Dewdney Avenue, including the construction of 2 new lanes on the selected Pinkie Road alignment for a short distance. Stage 2 involves the construction of new Pinkie Road between Highway 1 and Highway 11 (4-lane from Highway 1 to Dewdney Avenue and 2-lane from Dewdney Avenue to Highway 11).

The road infrastructure associated with new intermodal facility is expected to reduce the congestion on the CPR mainline by providing a more efficient system to transport goods in and out of Regina.

News Release - March 5, 2009

Province Unveils Roadwork Expansion Plan For Global Transportation Hub

Highways and Infrastructure Minister Wayne Elhard today made public the plans to upgrade and expand Pinkie Road and Dewdney Avenue to make way for continued development of the Global Transportation Hub (GTH).

"Work on Stage I of the road upgrades for the GTH will begin this spring in order to ensure the roadway will accommodate anticipated heavy truck traffic," Elhard said. "Strategic transportation planning is a critical element of Saskatchewan's strong and steady economic growth and we need to ensure our future road capacity provides the safest and most efficient routes possible. The GTH development has significant potential. By moving ahead with these roadway improvements we've shown our commitment to the continued strong growth in the province."

An owner whose land is under the threat of expropriation should seek legal advice from an expropriation lawyer and retain an appraiser that understands the relevant expropriation statute, and that possesses the skill and expertise required to complete the assignment. Very few appraisers specialize in expropriation work, as most appraisers lack the specialized knowledge, skills and experience necessary to produce a credible appraisal. An expropriation appraiser often works under the direction of legal counsel. An appraisal prepared on behalf of the expropriating authority must also meet the same expected standards of competency, and the appraisal report should be reviewed by an experienced review appraiser on behalf of the property owner.

A taking of private land for a public project, such as a major highway or the GTH, can have a profound influence on real estate prices, depending on the segment of the real estate market impacted by the project. A property owner that sold some of their land to the MHI under the threat of expropriation on two occasions (once mediated and once negotiated), years later, after land prices had escalated, filed a lawsuit against the government seeking more money.¹⁹ The court explained the legal principles involved when changes in land value are occasioned by an expropriation:

One might well anticipate that the value of land subject to expropriation might dramatically change in value. In *Fairford First Nation v Canada (Attorney General)* (1998), [1998 CanLII 9112 \(FC\)](#), [1999] 2 FC 48, the plaintiffs argued that an Order in Council to acquire 34 acres of land, having been delayed for over a decade and the fact that a highway had been built, meant the value of the land should have been renegotiated. The court disagreed, stating that the value of the land was determined by the value of comparable land in the area at the time, not by placing a special value on the land because of the highway or the lapse of time. [para. 62]

The court pointed out that, in 1970, the *Canada Expropriation Act*, SC 1969-70, c 41 (since rep) was amended to expressly provide that, in determining the value of expropriated land, no account was to be taken of the Crown's anticipated or actual use of the land after the expropriation. The court stated that, prior to this amendment, the criteria for calculation of compensation for expropriated land was less settled, but had always been clear that compensation was not to be based on value to the taker: *Diggon-Hibben Ltd. v Canada*, [1949 CanLII 50 \(SCC\)](#), [1949] SCR 712, at 715 and *Woods Manufacturing Co. v Canada (Attorney General)*, [1951 CanLII 36 \(SCC\)](#), [1951] SCR 504, at 508. As stated above, a similar provision is found in s. 49(1.1) of Saskatchewan's [Expropriation Procedure Act](#). [para. 62]

Compensation payable under the *Expropriation Procedure Act* must ignore any increases or decreases in value flowing from or having a causal connection to the expropriation. In the context of the Ministry of Highways' contemplated acquisition of the 204 acres, was the proposed Global Transportation Hub connected to the planned highway expansion? In other words, is the GTH part of the overall 'scheme'? As noted in the Auditor's Special Report (June 2016), both the Ministry of Government Services and the Ministry of Highways were to acquire the 204 acres (East Parcels) and an additional 41 acres (South Parcel):

In May 2012, the GTH CEO advised the GTH Board, in writing, that the Ministry of Government Services and MHI were to manage the acquisition of the South and East Parcels. [p. 14] [emphasis added]

The *Global Transportation Hub Authority Act* did not come into existence until August 2013, and did not possess the legislative power of expropriation enjoyed by the Ministry of Highways and Infrastructure (MHI). Why then, did the GTH Authority interfere or compete with MHI over the proposed acquisition of the 204 acres, and subject itself to the whims of the market place and pay an exorbitant price for the land, the value of which was, in fact,

¹⁹ *McNally Enterprises Ltd. v. Government of Saskatchewan*, 2018 S.K.Q.B. 122 (CanLII), <https://www.canlii.org/en/sk/skqb/doc/2018/2018skqb122/2018skqb122.pdf>.

mostly created by the 'scheme' itself? It was common knowledge that MHI would ultimately acquire these lands for highway purposes,²⁰ as disclosed by a former senior official of the Ministry of Highways, who also expressed concern over the purchase price:

The buyer in town was the government. No land developer had any interest in this land. They knew there was potential for an interchange. They knew they probably could not develop. Any proposed subdivision against a provincial highway—that is probably the worst land to speculate on.

There is no appraisal that gives that number [\$103,000 per acre]. There is no indicator even in the ballpark of that number.

"It is not in your best interest to be fabricating numbers, he wrote in early 2014 to his colleague. "Take the high road and let the executive be responsible for their decisions and be giving them the best advice possible and if they do not want to follow it, that is their choice."

²¹

The appraisal prepared on behalf of MHI clearly discloses that the value estimates of **\$30,000 per acre** and **\$35,000 per acre** are "assumptive" values rather than "as is" values. Presumably, without these assumptions, the value of the 204 acres, as of the effective date of appraisal (October 23, 2013²²), would have been less than \$30,000 per acre and \$35,000 per acre. It is also clear that any transactions occurring after MHI's March 9, 2009 public announcement of its highway plans to facilitate the GTH project caused the price of land to escalate.

The *GTH Authority Act* was not enacted until August 6, 2013.²³ Before the Standing Committee on Public Accounts on January 12, 2017,²⁴ Mr. Govindasamy, the Deputy Minister, related MHI's early involvement in land acquisitions for both highway purposes and the proposed GTH:

The Ministry of Highways and Infrastructure was primarily responsible for assembling land for the purposes of the Global Transportation Hub, which predates...[the arrival of Mr.

²⁰ According to a November 18, 2016 news article, at the time of the 2010 sale of 19.73 acres at \$9,000 per acre, that vendor was reportedly informed by MHI that "the rest of their land would be expropriated at a later date." Regina *Leader Post*, Saskatchewan government 'ripped off' nuns in land deal, <https://leaderpost.com/opinion/letters/saskatchewan-government-ripped-off-nuns-in-land-deal>, updated from Sept 5, 2017 (22 October 2018).

²¹ Geoff Leo, *Email shows Bill Boyd and premier's office were 'concocting a scheme' to pay too much for GTH land*, NDP says, <https://www.cbc.ca/news/canada/saskatchewan/email-shows-bill-boyd-and-premier-s-office-were-concocting-a-scheme-to-pay-too-much-for-gth-land-ndp-says-1.4274842> (21 October 2018).

²² On June 13, 2012, a 'draft' of the Appraisal Report was emailed to MHI, Government Services and GTA Authority.

²³ Government of Saskatchewan, *The Global Transportation Hub Authority Act*, <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/G5-01.pdf> (18 October 2018).

²⁴ Legislative Assembly of Saskatchewan, *Hansard Verbatim Report*, <http://docs.legassembly.sk.ca/legdocs/Legislative%20Committees/PAC/Debates/170112Debates-PAC.pdf> (18 October 2018).

Govindasamy] in the Ministry of Highways and Infrastructure in 2013. That is an ongoing process. [p. 160]

As of March 2016, the GTH encompassed 1,871 acres, of which 732 acres are owned by businesses operating out of the Hub and 346 acres are used for common infrastructure, and 114 acres are for use by MHI. Other than for 245 acres, including the controversial 204-acre purchase by the GTH Authority, MHI acquired the land for the GTH. MHI's land acquisition activity is summarized as follows:

Between 2007-08 and 2009-10, MHI either acquired or expropriated 1,180 acres for the Hub (excludes land for CP Rail and Loblaw) at a cost of \$24.6 million (i.e., average cost of \$20,850 per acre), including settlement costs relating to litigation with affected landowners.²⁵

The *GTH Act* states that, "if the purchase price or sale price of real property in one transaction entered into by the authority exceeds the amount fixed by the Lieutenant Governor in Council [\$5 million]," the authority must obtain the approval of the Lieutenant Governor in Council.

These same 204 acres had been previously acquired by Taupauff, when, in early 2012, he noticed an 87-acre parcel of land up for sale (listed in August 2011) next to the GTH, the industrial park owned by the provincial government. Taupauff paid the full asking price of \$45,000 per acre. Through his realtors, Taupauff then approached the owner of the adjoining 117 acres, struck a deal at \$55,000 per acre, and, in March 2012, had both properties under contract.²⁶ Negotiations for the 117 acres commenced in February 2012 starting at \$15,000 an acre, then \$25,000, \$30,000, \$45,000, and finally concluding at \$55,000 per acre.

Combined, Taupauff paid an average price of \$50,735 per acre for the 204 acres. How the two transactions were structured is unknown, but it is possible that a significant portion of the purchase price in each transaction was in the form of vendor-take-back mortgage financing on favourable terms and conditions, which is typical of speculative raw land purchases. Conventional mortgage financing on raw land on good terms and conditions is difficult to obtain, and the loan-to-value ratio usually does not exceed 50%. Taupauff controlled both properties pursuant to the March 2012 conditional agreements, which included extended due diligence periods and were not scheduled to close until February 26, 2013, allowing the potential purchaser time to find a buyer willing to pay a higher price for the lands. Both the pending transactions and property 'flips' closed on the same day, and Taupauff's name never appeared on title.

Taupauff said "he thought he might eventually be able to turn the properties into an industrial subdivision," reportedly uninformed by his realtor that "the government was

²⁵ At March 31, 2016, MHI owned about 540 acres it acquired for the GTH footprint.

²⁶ Geoff Leo, *The GTH land deal you've never heard of — and Bill Boyd won't talk about*, <https://www.cbc.ca/news/canada/saskatchewan/gth-land-deal-bill-boyd-never-heard-of-1.3800855> (18 October 2018).

thinking of building a highway through his land.”²⁷ These lands are not serviced; they are not zoned to permit any urban development; and they form part of the planned West Region Bypass, adjacent to a railway corridor.²⁸ A sketch of the proposed interchange, which appears to have been created in November 2011, had been circulated by MHI to potentially affected property owners. In June 2013, three months after the two vendors signed agreements to sell their lands to Taupauff, they were notified by MHI “warning that the government might need more of their land for the interchange.” That information was subsequently conveyed to Taupauff’s attorney, and Taupauff “still could kill the deal and gotten back his deposit,” but, instead, both transactions moved forward and closed on February 26, 2013. Buying land that is under the threat of expropriation is a highly unusual practice, especially if the prospective purchaser is a developer. As for a transaction motivated by speculation, buying land under the threat of expropriation only makes sense at a price below market value.

The two vendors that sold the combined 204 acres to Taupauff had previously sold some of their land holdings to MHI under the threat of expropriation. MHI purchased acreage at **\$9,000 per acre in 2010** and at **\$11,000 per acre in 2011**.²⁹ These prices are consistent with prices paid by the government for other properties around the same time:

²⁷ Ibid.

²⁸ Geoff Leo, *Businessmen made millions on Regina land that wound up in taxpayers' hands*, <https://www.cbc.ca/news/canada/saskatchewan/businessmen-millions-regina-land-bill-boyd-1.3420479> (18 October 2018).

²⁹ In 2018, one of the vendors brought an action against the Government of Saskatchewan for misrepresentation of the value of the land, and grossly underpaying. The court ruled against the vendor on the grounds that the statute limitation period had expired before the claim was issued in March 2016 (*McNally Enterprises Ltd. v. Government of Saskatchewan*, 2018 S.K.Q.B. 122 [CanLII], <https://www.canlii.org/en/sk/skqb/doc/2018/2018skqb122/2018skqb122.pdf> [19 October 2018]). The March 22, 2016 Statement of Claim indicates that MHI paid the property owner \$9,000 per acre for 44.70 acres (Parcel 109553777) in 2010, and \$11,000 per acre for 28.06 acres (Parcel 165025447) in 2011, and that both Parcels were acquired under the threat of expropriation. Based on a February 2010 appraisal prepared on behalf of the property owner indicating a value of \$38,000 per acre for both Parcels, the property owner claimed damages of \$2,053,920. See *Statement of Claim*, https://d3n8a8pro7vhmx.cloudfront.net/saskndp/pages/1287/attachments/original/1458831538/Statement_of_Claim_issued_16.03.22-2.pdf?1458831538 (23 October 2018).

- **(SW-24-17-21-W2)** pertains to a **159.45-acre** parcel acquired on **April 9, 2010**, from Granitewest Developments Ltd., for \$1,594,500, equivalent to **\$10,000 per acre** [subsequently offered **\$10,843.73 per acre**]. The matter of final compensation is in litigation.³⁰
- **(NW-19-17-20-W2)** pertains to a **156-acre** parcel acquired on **April 9, 2010**, for \$1,875,400, equivalent to **\$12,022 per acre**.

Also, in **August 2009**, when economic conditions were less robust as a consequence of the 2008 global financial crisis, the Regina Airport Authority purchased **217.77 acres** at a unit rate of **\$12,000 per acre**. This property, which abuts Regina Airport, is located within the city limits, and is zoned UH (Urban Holding). The acquisition is characterized as follows:

- In the July 2009 Five-Year Performance Review of Regina Airport, the acquisition is expected to “greatly increase its ability to utilize its air-side capacity and...leverage even greater growth in the near to mid-term future.”

On December 3, 2013, a recommendation from the Ministry of the Economy (Chair of the GTH) went to the GTH board recommending that the Government of Saskatchewan “acquire the east parcels [for \$105,000 per acre] to support the development of the interchange to access the Global Transportation Hub with the surplus lands being sold to the GTH for further development.” A follow-up recommendation to the GTH board on December 19, 2013 issued a revised recommendation stating that “Global Transportation Hub would acquire the lands at a slightly reduced price of \$103,000 per acre and support development of the interchange.”³¹ A series of memos prepared by GTH offers some insight into the acquisition of the 204 acres.³²

³⁰ These lands were initially acquired in March 2008 for \$4,000 per acre, prior to being conveyed in January 2009. *Granitewest Developments Ltd. v. Government of Saskatchewan*, 2015 S.K.Q.B. 320 (CanLII), <https://www.canlii.org/en/sk/skqb/doc/2015/2015skqb320/2015skqb320.pdf> (19 October 2018). A February 10, 2016 news article quotes from a 2012 statement of claim: “Granitewest said an appraisal prepared for it determined the land to be worth \$38,000 per acre. Two appraisals prepared for the province [MHI] said the land was worth \$10,000 [per acre] and \$8,750 [per acre], and another appraiser said the first two were both in order.” Granitewest claims the appraisers the government used specifically excluded three land sales worth \$37,500 per acre, \$32,598 per acre, and \$42,906 per acre. Granitewest was ultimately offered \$10,843.73 per acre, which in the lawsuit is called “unreasonably low.” See Darcy Senft, *Global Transportation Hub land prices scrutinized in 2012 lawsuit*, <https://www.cjme.com/2016/02/10/global-transportation-hub-land-prices-scrutinized-in-2012-lawsuit-2/> (23 October 2018).

³¹ The GTH Authority acquired the properties from 101225232 Saskatchewan Ltd. “The listed officers/directors are Anthony Marquart and Harold Rotstein and the shareholders are Harnei Management Ltd. and Royalty Developments Ltd.” and the company was incorporated on February 6, 2013. (See September 30, 2016 decision of the Office of the Saskatchewan Information and Privacy Commissioner.)

³² Saskatchewan Legislative Assembly, *PAC 24-28 GTH - Responses to questions (14)*, [http://docs.legassembly.sk.ca/legdocs/Legislative%20Committees/PAC/Tabladdocs/PAC%2024-28%20GTH%20-%20Responses%20to%20questions%20\(14\).pdf](http://docs.legassembly.sk.ca/legdocs/Legislative%20Committees/PAC/Tabladdocs/PAC%2024-28%20GTH%20-%20Responses%20to%20questions%20(14).pdf) (20 October 2018).

The February 12, 2013, 42-page appraisal was prepared for the exclusive use of *Royalty Developments Limited* (Pres: Anthony Marquart)³³ and lenders of their choosing, and they were listed as the only intended users of the appraisal report, which precluded the GTH Authority from relying on the report. The appraisal report has not been made public, and, in fact, the Saskatchewan privacy Commissioner ordered all copies in the possession of the government destroyed or returned to the appraiser, as GTH Authority did not pay for the appraisal and because “the GTH was inappropriately provided a copy of the appraisal” without written authorization of the appraiser. In reaching this decision,³⁴ the Commissioner made note of the following restrictions placed in the appraiser’s report:

The intended use of the appraisal is for internal uses of the client and to assist with financing arrangements relating to the subject property. It is not reasonable for any other person other than the client, the lender of the client’s choice, and [the appraisal firm] to rely upon this appraisal without first obtaining written authorization from all parties. This report has been prepared on the assumption that no other person will rely on it for any other purpose and all liability to all such persons is denied. [para. 15] [emphasis added]

Except as it may be necessary to expedite the function of this appraisal as identified herein, it is not reasonable for any person other than the client, the lender of the client’s choice, and [the appraisal firm] to rely upon this appraisal without first obtaining written authorization from all parties. [para. 16]

Neither possession of this report nor a copy of it carries with it the right of publication. All copyright is reserved to the author and is considered confidential by the author. It shall not be disclosed, quoted from or referred to, it [sic] whole or in part, or published in any manner without the expressed written consent of the client and [the appraisal firm]. [para. 16]

It is self-evident that the GTH Authority failed to heed the disclaimers and cautions prominently placed up front in the appraisal report—not buried or deliberately concealed in the body of the report. There is nothing ambiguous about the language that would cause confusion or misunderstanding. No satisfactory explanation has been provided to justify the government’s reliance on a report so clearly marked as to the intended users and the intended use. Even if the GTH Authority had been an intended user of the appraisal, other aspects of the appraisal should have raised concerns. As reported in the Provincial Auditor’s 2016 Special Report:

A copy of...[the February 12, 2013] appraisal [prepared on behalf of Royalty Development Ltd. (Pres: Anthony Marquart)] for the NW quarter of the East Parcels [116.86 acres], which assigned a land value of about \$129,000 per acre,...used a different valuation approach [cash flow-subdivision development analysis] than the GTH requested [Direct Comparison Approach] [for its own appraisals].

³³ According to the website, Royalty Developments was established in 2003, and have “developed, or are in the process of developing...commercial, residential and mixed use projects in Western Canada.” Royalty Developments, <https://www.royaltydevelopments.com/who-we-are> (10 October 2018).

³⁴ *Global Transportation Hub Authority (Re)*, 2016 CanLII 77431 (SK IPC), <https://www.canlii.org/en/sk/skipc/doc/2016/2016canlii77431/2016canlii77431.html?searchUrlHash=AAAQADR1RIAAAAAE&resultIndex=7> (17 October 2018).

[The appraisal] was prepared in February 2013 for a purpose other than selling the land. Given this different purpose, the appraisal used a different appraisal methodology [cash flow-subdivision development analysis] that used numerous assumptions. Changes to any one of the assumptions would impact the appraiser's opinion of land value. Also, it did not use the direct-comparison approach in the analysis....[emphasis added]

Considered only the NW quarter [116.86 acres] of the East Parcels. We found this difference important because the GTH's October 2013 [commissioned circa May to August 2013] appraisal...had assigned significantly different land values for the two quarters comprising the East Parcels. [emphasis added]

The other approach to valuing the land, the Subdivision Development Method (SDM), is a highly unreliable method of valuation, and inappropriate for valuing raw land that is not serviced, is not physically ripe for development, and for which there is no immediate demand for end users (i.e., no presales to end users of serviced lots or built space) and for which no credit facility has been obtained. The SDM requires numerous inputs, all of which must be individually supported, and changes in any of the inputs can lead to different estimates of land value. The SDM can be an appropriate valuation model as a test of financial feasibility if development approvals can be obtained, infrastructure installed, credit facility arranged, and finished lots absorbed (absorption stage), all within a reasonable timeframe of, say, five years. In any event, SDM is rarely employed as a standalone valuation approach in estimating the market value of raw land. According to *The Appraisal of Real Estate*, 14th edition,

As a tool in land valuation, the subdivision development method is primarily used to provide a bulk sale value for a group of subdivision lots, either proposed or existing. The method can also be used to estimate the value of vacant land or finished lots in a proposed subdivision development scenario. The subdivision development method relies on discounted cash flow analysis and requires that the property have a highest and best use for development consistent with the proposed development plan in order to reflect the current value of the vacant land.

For subdivision development analysis to be useful in developing an opinion of current land value, the land must support a highest and best use for immediate development at the time of the appraisal or there must be evidence of market demand to support financially feasible subdivision development. Market analysis provides the evidence necessary to support absorption estimates, retail lot values, and other components required to calculate land value using subdivision development analysis. [p. 372]

The 2018 edition of *CUSPAP* cautions against reliance on Discounted Cash Flow Analysis (DCF) as a standalone valuation approach:

18.30.2. DCF analysis is an additional tool available to the Member and is best applied when developing value opinions in the context of one or more of the other approaches to value.

Also, the appraisal relates only to one of the two properties, the 116.86-acre parcel, which relatively speaking is more valuable per acre than the other (87.40-acre parcel) because of proximity to services.

While the government had the unauthorized appraisal in its possession, it never made any overtures to the appraiser, nor did the government retain a qualified appraiser to conduct a review of the appraisal. In fact, the Senior Advisor representing the GTH Authority maintained “that he had deemed...[the] appraisal as irrelevant to the negotiations.[and] as a result he indicated that he did not formally review it.”³⁵ That statement is not consistent with comments appearing in the Privacy Commissioner’s September 30, 2016 decision that “the GTH has recognized that a copy of the Appraisal was useful to them, however, it was not necessary,” [and] “that this Appraisal only formed part of the information considered for one land transaction [116.86 acres]...[and that] they did not rely on this appraisal to a substantial extent.” A March 3, 2014 memo prepared by GTH Authority discloses the following details about the purchase of the 204.26 acres and acknowledges relying on two appraisals, including the unauthorized one:

- A total of 204.26 acres (82.7 hectares) will be assembled. It is estimated that MHI will require about 80 acres for the West Regina Bypass.
- The purchase price in the Offer to Purchase was based on two appraisals and an actual land transaction that closed in February 2013.
- The first appraisal was completed in October 2013 using a direct comparison approach arriving at a market value of about \$65,000 per acre for the North parcel [116.86 acres] and \$51,000 for the Southern parcel [87.40 acres]. A second appraisal was completed in February 2013 using a cash flow-subdivision development analysis arriving at a market value of about \$129,556 per acre for the North parcel [116.86 acres]. The purchase price for the land transaction in February 2013 was about \$84,000 per acre.
- Based on the above information, the GTHA was approved to send a formal Offer to Purchase on December 23, 2013. The Offer to Purchase was accepted by the seller on December 24, 2013 with a March 3, 2014 closing date.
- The price the accepted offer was for \$103,000 per acre (about \$254,410 per hectare) for a total cost of about \$21 million.

Pursuant to the 2012 edition of *CUSPAP*, an appraisal must disclose all particulars surrounding recent sales, listings (expired and current) and pending agreements of purchase and sale pertaining to the subject property:

³⁵ Judy Ferguson, *Special Report: Land Acquisition Processes: Global Transportation Hub Authority and Ministry of Highways and Infrastructure*, <https://auditor.sk.ca/pub/publications/special/Special%20Report%20Land%20Acquisition%20Processes%20Final.pdf> (19 October 2018), p. 30.

7.24 An Agreement for Sale/Option/Listing

Must be analyzed and reported if any agreement for sale, option, lease... or listing of the subject property occurred within one year prior to the date of valuation, including any pending/current Contract of Purchase and Sale... in such information is available to the appraiser in the normal course of business.

7.25 Prior Sales

Must be analyzed and reported if any sale of the subject property occurred within three years prior to the effective date of the appraisal, if such information is available as at the date of valuation to the appraiser in the normal course of business.

There are only two possibilities as to these mandatory disclosures under *CUSPAP*. Either the February 12, 2013 appraisal report does not include the disclosures, which means that the report has not been prepared in compliance with *CUSPAP*, or that the disclosures are included in the appraisal report, and were ignored by the GTH Authority, as well as the Ministry of the Economy. Either way, property-specific information of this nature is critical as to its influence on the market value of the 116.86-acre parcel.

It was the Ministry of the Economy that provided the GTH Authority with an emailed copy of the unauthorized appraisal on December 20, 2013, and the email offers no explanation as to when and how the appraisal came into the possession of the Ministry of the Economy. However, a November 11, 2013 email circulated within the Ministry of the Economy³⁶ included the February 12, 2013 appraisal report as an attachment, and expressed concern over the appraisal methodology, but that the appraisal, which was of only the 116.86-acre parcel, could “make a case” in rationalizing paying more for the property than warranted:

I received this email and thought I would share it. While I understand that there will be push back in terms of appraisal methodologies [cash flow-subdivision development analysis], it does mean that we have some information that makes a case for our position.

I intend to call Anthony [Marquart] again tomorrow and see where we go from here.

What was the point of the GTH’s Senior Advisor having possession of a less current appraisal report dated February 12, 2013, if there was no intention of reviewing or relying on it? Why was the Senior Advisor in possession of an appraisal report, which he asserted was of no interest to him? It appears that a deal with Marquart was in the works prior to October 2013, which explains why the GTH Authority commissioned its own appraisal in September 2013.³⁷ According to the appraisal report, the function (intended use) of the appraisal is:

³⁶ Geoff Leo, *Email shows Bill Boyd and premier's office were 'concocting a scheme' to pay too much for GTH land, NDP says*, <https://www.cbc.ca/news/canada/saskatchewan/email-shows-bill-boyd-and-premier-s-office-were-concocting-a-scheme-to-pay-too-much-for-gth-land-ndp-says-1.4274842> (21 October 2018).

³⁷ The GTH Authority’s appraisal appears to have been commissioned earlier, as one of the photos in the report is dated May 16, 2013 and the printout of the Certificate of Title is dated August 28, 2013.

To estimate the current market value of the fee simple estates within the subject properties in order to assist Vertex [agent for GTH Authority] in negotiations with the owner(s) of the subject properties to enable buy/sell agreement(s) with the owners.

Why the government disregarded an October 23, 2013 appraisal prepared on behalf of MHI, which estimated the value of the 204 acres at **\$30,000 per acre** (87.40 acres) and **\$35,000 per acre** (116.86 acres), has never been adequately explained. This October 23, 2013 appraisal makes full disclosure of the sales history of the subject property and the required analysis, as mandated by sections 7.24 and 7.25 of *CUSPAP*:

101225232 Saskatchewan Ltd. purchased the land [116.86 acres] for \$82,040/acre on February 26, 2013 title #143310912 from Taupauff who purchased for \$55,000 per acre in approx. March 2012 from Sisters of our Lady of the Missions Ltd. Taupauff did not take title. They did a land flip.

101225232 Saskatchewan Ltd. purchased the land for \$71,681/acre [87.40 acres] on February 26, 2013 title #143310473 from Taupauff who purchased in approx. March 2012 for \$45,000 per acre from McNally Enterprises Ltd. Taupauff did not take title. They did a land flip.

The GTH Authority's own commissioned appraisal, effective September 26, 2013,³⁸ was more recent than the unauthorized report (February 26, 2013) in its possession. This 28-page appraisal, excluding appendices, based on the Direct Comparison Approach, reflects values of **\$65,000 per acre** (116.87 acres) and **\$51,000 per acre** (87.41 acres).³⁹ The value estimates assigned to the two parcels are based on the following conclusion of highest and best use:

[T]he highest and best use of the subject properties, subject to the assumptions and limiting conditions...are as holding properties awaiting light/medium [industrial] development in the medium term future, with primary agricultural uses in the interim period. [p. 16]

In discussing the sales history of the two properties, as mandated by sections 7.24 and 7.25 of *CUSPAP*, the report states:

Public records show that the subject property [116.87 acres] transferred on February 26, 2013 for \$9,818,588 [**\$84,020 per acre**] from 139 Land Corporation to 101225232 Saskatchewan Ltd.,⁴⁰ this sale has been utilized as Index #2. On **March 21, 2012**, there was a

³⁸ Canadian Resource Valuation Group, *Appraisal Report*, <https://www.documentcloud.org/documents/2698565-Canadian-Valuation-Group-Appraisal-Jan8-16.html> (21 October 2018).

³⁹ The appraisal report cautions that “[i]t is relevant to note that in determining the market value of the subject properties we have not considered any discount or adjustment relative to those areas [13.56 acres] encumbered by registered pipeline rights of way...” (emphasis added). As to the issue of servicing, the appraisal states “[p]er conversations with city officials, there is a 600 mm diameter water main and a 500 mm diameter sanitary main located on the north boundary of... [the 116.86-acre parcel] that is available for hook up. In addition, hook up to the regionally designed water and sewer lines of the GTH may also be available upon payment of pro-rata infrastructure service charges.”

⁴⁰ *101225232 Saskatchewan Ltd.* was incorporated February 6, 2013 as “a real estate holding company.”

miscellaneous interest registered on title by 139 Land Corporation claiming an interest as purchaser under an accepted Offer to Purchase for **\$55,000 per acre** confirmed with the purchaser. Written documentation was not provided. To our knowledge, the subject property is not currently listed for sale, nor to our knowledge are there any sale agreements or offers to purchase the subject property. However, we understand the subject property is currently owned by a development company that is active in the area. [emphasis added]

Public records show that the subject property [87.41 acres] transferred on February 26, 2013 for \$6,264,954 [**\$71,673 per acre**] from 139 Land Corporation to 101225232 Saskatchewan Ltd., this sale has been utilized as Index #3. On **March 21, 2012**, there was a miscellaneous interest registered on title by 139 Land Corporation claiming an interest as purchaser under an accepted Offer to Purchase for **\$45,000 per acre** confirmed with the purchaser. Written documentation was not provided. On September 13, 2011, there was a non-arms length transfer of the property between related parties. To our knowledge, the subject property is not currently listed for sale, nor to our knowledge are there any sale agreements or offers to purchase the subject property. However, we understand the subject property is currently owned by a development company that is active in the area. [emphasis added]

It is obvious from the disclosures in the September 23, 2013 appraisal report that the GTH Authority was acutely aware that these two properties had been flipped in a speculative transaction, and that the results of the appraisal did not warrant paying a price anywhere near \$103,000 per acre for the 204 acres. About the same time, in a negotiated transaction of a 24.48-acre parcel (immediately west of Global Transportation Hub) at **\$18,126 per acre**, the Province of Saskatchewan took possession in October 2013, and in December 2013 conveyed the parcel to Canadian Pacific Railway Company to allow for expansion of Canadian Pacific's operations at the Global Transportation Hub.

As well, on the market in 2013 was a 298-acre parcel available at an asking price of **\$29,000 per acre** (reduced from \$45,000 per acre). The parcel is immediately adjacent to the City of Regina, but, at that time, was not located within a defined plan area for future development. Reportedly, the property had been under contract twice at \$25,000 per acre, but a jurisdictional dispute between RM of Sherwood and the City of Regina, which wanted to annex the lands, over the source of the needed water supply for a proposed industrial plan of subdivision derailed both conditional transactions. Eventually, the property sold in **June 2014** for **\$15,000 per acre**. Although zoned AGI – Agriculture, the lands are shown as 'Industrial' in the new proposed zoning by-law.

Whatever the GTH Authority's rationale for purchasing the 204 acres at the grossly inflated and unwarranted price of **\$103,000 per acre**, it is apparent that the GTH Authority:

- Had no appraisal policies in place to support potential land acquisitions, and it lacked in-house appraisal expertise;
- Failed to act prudently on behalf of the taxpaying public, which ultimately were out millions of dollars; and

- Undermined MHI's intention to acquire the lands for highway purposes, a ministry with the statutory power to acquire the lands at market value in compliance with the *Expropriation Procedure Act*.

A governmental agency that lacks the expertise to review an appraisal report, whether commissioned directly or received indirectly through a third party, should retain a competent review appraiser. A third-party appraisal report should never be accepted or acted upon unless the governmental agency (e.g., condemning/expropriating authority) is expressly identified as an intended user, the intended use is consistent with the agency's objective (e.g., purchase, expropriate, etc.), and allows for public disclosure (e.g., freedom of information request). In the event of sustained financial losses stemming from reliance on an appraisal report as an unintended user, it is unlikely that a negligence claim against the appraiser would be successful.

About the Author

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